

## CROSSWALK BETWEEN ARIZONA AND FEDERAL LAW Regarding Special Education

ARIZONA REGULATIONS R7-2-401	FEDERAL REGULATIONS 34 CFR sec. 300.1 et seq.	COMMENTS
A. <del>For the purposes of this Article, the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. 1400 et seq. and its implementing regulations, 34 CFR 300.1 et seq., are incorporated herein by reference. Copies of the incorporated material can be obtained from the U.S. Government Printing Office, Attn: New Orders, P.O. Box 979050, St. Louis, MO 63197-9000 or the Arizona Department of Education, Exceptional Student Services, 1535 West Jefferson Street, Phoenix, Arizona 85007.</del>	There is no federal requirement to incorporate all federal special education law by reference into state law.	To the extent that all of federal law is incorporated by reference, there is no legal need for a state law that repeats those requirements. Any state law beyond this provision would either be duplicative, inconsistent, or require more than federal law.
B. Definitions. All terms defined in the IDEA, its implementing regulations and A.R.S. § 15-761 are applicable, with the following additions: 1. "Accommodations" means the provisions made to allow a student to access and demonstrate learning. Accommodations do not substantially change the instructional level, the content or the performance criteria, but are made in order to provide a student equal access to learning and equal opportunity to demonstrate what is known. Accommodations shall not alter the content of the curriculum or a test, or provide inappropriate assistance to the student within the context of the test.	(3) Specially designed instruction means <b>adapting</b> , as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction-- (i) To address the unique needs of the child that result from the child's disability; and (ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.  34 C.F.R. § 300.39  (e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed <b>modifications</b> in the general education curriculum. 34 C.F.R. § 300.116	The federal IDEA regulation does not use the term "accommodations." The term as applied in the context of equal access as a civil rights issue assumes that with some adaptation the child will access the same general curriculum for the child's age group or grade level. The concept of "reasonable accommodation" is more commonly used in employment law. It is contrasted with "modification" which refers to an adaptation that substantially changes what a student is expected to learn and know. (See No. 18 below) Both forms of adaptation are to ensure instruction of eligible children in the "least restrictive environment."

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<p>B.2 “Adaptations” means changes made to the environment, curriculum, and instruction or assessment practices in order for a student to be a successful learner. Adaptations include accommodations and modifications. Adaptations are based on individual student’s strengths and needs.</p>	<p>(3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction--</p> <p>(i) To address the unique needs of the child that result from the child's disability; and</p> <p>(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.</p> <p>34 C.F.R. § 300.39</p> <p>(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.</p> <p>34 C.F.R. § 300.116</p>	<p>The federal rule refers to changes in "content, methodology, or delivery of instruction" where the Arizona rule refers to "the environment, curriculum, and instruction or assessment practices." The Arizona rules also states that the purpose of the changes is to make the student a "successful learner." Federal law does not mention success; it only requires that the changes address a child's unique needs and ensure access to the general curriculum and standards. Case law has tended to treat reasonable academic progress as evidence that adapted services are appropriate.</p> <p>The federal IDEA regulation does not use the term "accommodations." The term as applied in the context of equal access as a civil rights issue assumes that with some adaptation the child will access the same general curriculum for the child's age group or grade level. The concept of "reasonable accommodation" is more commonly used in employment law. It is contrasted with "modification" which refers to an adaptation that substantially changes what a student is expected to learn and know. (See below) Both forms of adaptation are to ensure instruction of eligible children in the "least restrictive environment."</p>
<p>B.3. “Administrator” means the chief administrative official or designee (responsible for special education services) of a public education agency.</p>	<p>(a) General. Local educational agency or LEA means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.</p> <p>34 C.F.R. § 300.28</p> <p>(4) A representative of the public agency who--</p> <p>(i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;</p>	<p>This term is not defined in Federal law. Federal law requires a "representative" who is knowledgeable and authorized to bind the LEA to an IEP. It can be anyone designated as such by the LEA. The AZ regulation implies that this is the Special Ed Director of the LEA, but that person is not the only person who can act on behalf of the public education agency in the regulations that follow.</p> <p>This term may be defined elsewhere in</p>

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	(ii) Is knowledgeable about the general education curriculum; and (iii) Is knowledgeable about the availability of resources of the public agency. 34 C.F.R. § 300.321	Arizona law for general education purposes and therefore be unnecessary.
B.4. "Audiologist" means a person who specializes in the identification and prevention of hearing problems and in the non-medical rehabilitation of those who have hearing impairments, and who is licensed to practice audiology according to A.R.S. Title 36, Chapter 17, Article 4.	(a) General. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. (b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that-- (1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and (2) Ensure that related services personnel who deliver services in their discipline or profession-- (i) Meet the requirements of paragraph (b)(1) of this section; and (ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and (iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.  34 C.F.R. § 300.156	An LEA is required by Federal law to provide various professional services to children with hearing impairments, but leaves it to state law to determine the licensing of the those professions, such as audiologist. If the licensing standards are established elsewhere in Arizona law, this regulation may be unnecessary.
5. "Boundaries of responsibility" means for: a. A school district, the geographical area within the legally designated boundaries. b. A public agency other than a school district, the population of students enrolled in a charter school or receiving educational services from a public agency.	Federal law does not define this term or designate how instruction and services must be provided at the local level. It is up to each state to assign responsibility for providing FAPE to all eligible students within the structure of the state public education system.  (a) General. Local educational agency or LEA means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools. (b) Educational service agencies and other public institutions or agencies. The term includes-- (1) An educational service agency, as defined in § 300.12; and	The term "boundaries of responsibility" in this state regulation is repeated throughout the Arizona regulations to indicate that all the responsibilities of special education rest on <u>either</u> the local PEA for all the eligible students and their parents within the geographic boundaries of the PEA <u>or</u> another public agency designated as the provider for a particular student or class of students. It might be useful to further define this term in the context of the regular responsibilities of PEAs to provide general education to all students residing within the PEA's geographic boundaries.

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	<p>(2) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public nonprofit charter school that is established as an LEA under State law.</p> <p>34 C.F.R. § 300.28</p>	It may be helpful to list any circumstances under which the PEA of residence is not the responsible agency, in order to avoid jurisdictional disputes over cost. (E.g., jails, foster homes, mental hospitals)
6. "Certificate in speech and language therapy" means a speech-language pathologist or speech-language technician certificate awarded by the State Board of Education.	<p>(a) General. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.</p> <p>(b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that--</p> <p>(1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and</p> <p>(2) Ensure that related services personnel who deliver services in their discipline or profession--</p> <p>(i) Meet the requirements of paragraph (b)(1) of this section; and</p> <p>(ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and</p> <p>(iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.</p> <p>34 C.F.R. § 300.156</p>	An LEA is required by Federal law to provide various professional services to children with speech and language disabilities, but leaves it to state law to determine the licensing of the those professions. If the licensing standards are established elsewhere in Arizona law, this regulation may be unnecessary.
7. "Certified school psychologist" means a person holding a certificate from the Arizona State Board of Education issued pursuant to 7 A.A.C. 2, Article 6, in the area of school psychology.	Same as above	Same as above
8. "Certified speech-language therapist" means a person holding a speech-language pathologist or speech-language technician certificate from the Arizona State Board of Education issued pursuant to 7 A.A.C. 2, Article 6, and a license from the Arizona	Same as above	Same as above, except that this regulation seems to overlap No. 6 in that the holder of the certificate and the certificate are both based on the same professional standards and certification process. One regulation would probably be sufficient.

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Department of Health Services as a speech-language pathologist in accordance with A.R.S. Title 36, Chapter 17, Article 4.		
9. "Department" means the Arizona Department of Education.	State educational agency or SEA means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law. 34 C.F.R. § 300.41	This regulation, when read together with Sections M and N, clarifies that ADE is the SEA for purposes of overall supervision and avoids the repeated use of the full name in numerous provisions below.
10. "Doctor of medicine" means a person holding a license to practice medicine pursuant to A.R.S. Title 32, Chapter 13 (medical doctor) or Chapter 17 (doctor of osteopathy).	(a) General. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities. (b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that-- (1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and (2) Ensure that related services personnel who deliver services in their discipline or profession-- (i) Meet the requirements of paragraph (b)(1) of this section; and (ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and (iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.  34 C.F.R. § 300.156	Several regulations use this term in describing the qualifications of person who must identify a child with a disability based on a particular medical or health condition. As above, this cross reference to state licensure standards may not be necessary, unless "doctor of medicine" is susceptible to multiple interpretations.
11. "Exceptional Student Services Division" or "ESS" means the Exceptional Student Services Division of the Arizona Department of Education.	Not defined in Federal law.	This title for the ADE division responsible for Special Education only appears in the introductory paragraph (which is self-explanatory) and in this definition and therefore may be unnecessary.

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<p>12. "Evaluator" means a qualified person in a field relevant to the child's disability who administers specific and individualized assessment for the purpose of special education evaluation and placement.</p>	<p>(c) Other evaluation procedures. Each public agency must ensure that--</p> <p>(1) Assessments and other evaluation materials used to assess a child under this part--</p> <p>(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;</p> <p>(ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;</p> <p>(iii) Are used for the purposes for which the assessments or measures are valid and reliable;</p> <p>(iv) <b><u>Are administered by trained and knowledgeable personnel;</u></b> and</p> <p>(v) Are administered in accordance with any instructions provided by the producer of the assessments.</p> <p>34 C.F.R. § 300.304</p>	<p>The Federal rule generally requires that anyone performing any evaluation of a disabled child must be qualified in the matter being evaluated. This Arizona regulation only states that such person shall be "qualified" and does not appear to add anything to the Federal requirement that the person be "trained and knowledgeable." Any applicable licensing standards are covered under 34 C.F.R. § 300.156.</p>
<p>13. "Full and individual evaluation" means procedures used in accordance with the IDEA to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. This evaluation includes:</p> <p>a. A review of existing information about the child;</p> <p>b. A decision regarding the need for additional information;</p> <p>c. If necessary, the collection of additional information; and</p> <p>d. A review of all information about the child and a determination of eligibility for special education services and needs of the child.</p>	<p>(a) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with § 300.503, that describes any evaluation procedures the agency proposes to conduct.</p> <p>(b) Conduct of evaluation. In conducting the evaluation, the public agency must--</p> <p>(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining--</p> <p>(i) Whether the child is a child with a disability under § 300.8; and</p> <p>(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);</p> <p>(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and</p> <p>(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.</p> <p>34 C.F.R. § 300.304</p> <p>(a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must--</p>	<p>This Arizona regulation is somewhat ambiguous. Initially, it refers to "procedures used in accordance with the IDEA" and then blends together new evaluations and review of existing data. Subparts a, b, and c of the regulation seem to repeat provisions of 34 CFR sec. 300.305(a)(2), while subpart d appears to repeat the requirements of 34 CFR sec. 300.304(b).</p> <p>The current regulation seems to convey a preference for evaluation based on existing data and does not include in the definition the procedures that must be used if the IEP team does not decide the existing data is adequate or the parents disagree with the decision to rely on existing data rather than conduct new assessments.</p>

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	<p>(1) Review existing evaluation data on the child, including--</p> <ul style="list-style-type: none"> <li>(i) Evaluations and information provided by the parents of the child;</li> <li>(ii) Current classroom-based, local, or State assessments, and classroom-based observations; and</li> <li>(iii) Observations by teachers and related services providers; and</li> </ul> <p>(2) On the basis of that review, and input from the child's parents, <b>identify what additional data, if any, are needed</b> to determine--</p> <ul style="list-style-type: none"> <li>(i)(A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or</li> <li>(B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;</li> <li>(ii) The present levels of academic achievement and related developmental needs of the child;</li> <li>(iii)(A) Whether the child needs special education and related services; or</li> <li>(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and</li> <li>(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.</li> </ul> <p>(b) Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting.</p> <p>(c) Source of data. The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.</p> <p>(d) Requirements if additional data are not needed.</p> <p>(1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of--</p> <ul style="list-style-type: none"> <li>(i) That determination and the reasons for the determination; and</li> <li>(ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.</li> </ul> <p>(2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.</p> <p>(e) Evaluations before change in eligibility.</p> <p>(1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with §§ 300.304 through 300.311 before determining that the child is no longer a child with a disability.</p> <p>(2) The evaluation described in paragraph (e)(1) of this section is not required</p>	

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	<p>before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.</p> <p>(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.</p> <p>34 C.F.R. § 300.305</p>	
<p><del>14. "Independent educational evaluation" means an evaluation conducted by a qualified evaluator who is not employed by the public education agency responsible for the education of the child in question.</del></p>	<p>(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question;</p> <p>34 C.F.R. § 300.502</p>	<p>This regulation repeats the Federal definition of IEE verbatim.</p>
<p>15. "Interpreter" means a person trained to translate orally or in sign language in matters pertaining to special education identification, evaluation, placement, the provision of FAPE, or assurance of procedural safeguards for parents and students who converse in a language other than spoken English. Each student's IEP team determines the level of interpreter skill necessary for the provision of FAPE.</p>	<p>There is no Federal regulation that defines "interpreter" in this manner.</p> <p>(c) Other evaluation procedures. Each public agency must ensure that--</p> <p>(1) Assessments and other evaluation materials used to assess a child under this part--</p> <p>(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;</p> <p>(ii) [Evaluations] are provided and administered <b>in the child's native language or other mode of communication</b> and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;</p> <p>(iii) Are used for the purposes for which the assessments or measures are valid and reliable;</p> <p>(iv) Are administered by trained and knowledgeable personnel;</p> <p>34 C.F.R. § 300.304</p> <p>(e) Use of interpreters or other action, as appropriate. The public agency must take <b>whatever action is necessary to ensure that the parent understands</b> the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.</p> <p>34 C.F.R. § 300.322</p>	<p>Several Federal regulations state that interpreters shall be provided by the PEA as needed to ensure accurate student assessments or the meaningful participation of parents in IEP meetings. In addition, the regulations cited above require that all persons employed by the PEA to perform assessments or to provide services must be properly trained and certified in their areas of specialty. The instant regulation repeats in more general terms the Federal requirement without identifying any certification standard or process for interpreters. In that sense, it is inconsistent with other qualification rules that cross reference other Arizona professional standards laws. It leaves it to the IEP team to determine what kind of interpreting skills are necessary to provide FAPE to a particular student.</p>



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<p>16. "Language in which the student is proficient" means all languages including sign language systems.</p>	<p>(ii) [Evaluations] are provided and administered <b><u>in the child's native language or other mode of communication</u></b> and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;</p> <p>34 C.F.R. § 300.304</p> <p>(2) Consideration of special factors. The IEP Team must--</p> <p>(i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;</p> <p>(ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;</p> <p>(iii) In the case of a child who is blind or visually impaired, provide for <b><u>instruction in Braille</u></b> and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;</p> <p>(iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in <b><u>the child's language and communication mode</u></b>, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and</p> <p>(v) Consider whether the child needs assistive technology devices and services.</p> <p>34 C.F.R. § 300.324</p>	<p>The state regulation refers only to language and sign language systems, where the Federal regulation uses the term "mode of communication." The state rule may be under-inclusive and therefore inconsistent with Federal law to the extent that there are modes of communication that are not recognized as official languages.</p>
<p>17. "Licensed psychologist" means a person holding a license from the state of Arizona Board of Psychologist examiners in accordance with A.R.S. Title 32, Chapter 19.1, Article 2.</p>	<p>(a) General. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.</p> <p>(b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that--</p> <p>(1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and</p>	<p>Several regulations use this term in describing the qualifications of person who must identify a child with a disability based on a particular medical or health condition. As above, this cross reference to state licensure standards may not be necessary.</p> <p>An alternative would be a single Arizona regulation that states that all references to licensed or certified professions and occupations are subject to the definitions of</p>

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	<p>(2) Ensure that related services personnel who deliver services in their discipline or profession--</p> <p>(i) Meet the requirements of paragraph (b)(1) of this section; and</p> <p>(ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and</p> <p>(iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.</p> <p>34 C.F.R. § 300.156</p>	<p>those professions and occupations and standards established in Arizona law.</p>
<p>18. "Modifications" means substantial changes in what a student is expected to learn and to demonstrate. Changes may be made in the instructional level, the content or the performance criteria. Such changes are made to provide a student with meaningful and productive learning experiences, environments, and assessments based on individual needs and abilities.</p>	<p>(e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed <b>modifications</b> in the general education curriculum.</p> <p>34 C.F.R. § 300.116</p> <p>(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 300.320 through 300.324, and that must include--</p> <p>(1) A statement of the child's present levels of academic achievement and functional performance, including--</p> <p>(i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or</p> <p>(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;</p> <p>(2)(i) A statement of measurable annual goals, including academic and functional goals designed to--</p> <p>(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and</p> <p>(B) Meet each of the child's other educational needs that result from the child's disability;</p> <p>(ii) For children with disabilities who take <b><u>alternate assessments aligned to alternate academic achievement standards</u></b>, a description of benchmarks or short-term objectives;</p> <p>(3) A description of--</p> <p>(i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and</p>	<p>Federal regulations do not contain a definition of "modification." It is not clear why Arizona regulations define the term, since it does not appear anywhere else in the state regulations. The concept has its greatest meaning in the context of testing, since a modification can make a test score invalid as a measurement of grade or age level knowledge or skill. Under the Federal rules, modifications are appropriate if necessary to keep the student in an age-appropriate regular classroom and still make progress toward the students individual annual goals – even if those goals are not the same as the general goals at that grade level.</p> <p>A more complete explanation of the interplay between accommodations and modifications is contained in the U.S. Department of Education Non-Regulatory Guidance on <i>Modified Academic Achievement Standards</i>, dated July 20, 2007.</p>

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	<p>(ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;</p> <p>(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a <b><u>statement of the program modifications</u></b> or supports for school personnel that will be provided to enable the child--</p> <p>(i) To advance appropriately toward attaining the annual goals;</p> <p>(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and</p> <p>(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;</p> <p>(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;</p> <p>(6)(i) A statement of any <b><u>individual appropriate accommodations</u></b> that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and</p> <p>(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why--</p> <p>(A) The child cannot participate in the regular assessment; and</p> <p>(B) The particular alternate assessment selected is appropriate for the child; and</p> <p>(7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.</p> <p>34 C.F.R. § 300.320</p>	
<p>19. "Paraeducator" means a person employed to assist with the education of students but who <b><u>is not certified to teach</u></b> by the Arizona Department of Education. Alternate terms may include paraprofessional, teacher aide, instructional assistant or other similar titles.</p>	<p>(a) General. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.</p> <p>(b) Related services personnel <b><u>and paraprofessionals</u></b>. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that--</p> <p>(1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the</p>	<p>The Federal regulations under the IDEA do not define either "paraeducator" or "paraprofessional." However, NCLB contains minimum qualification language for paraprofessionals that apply to any agency that receives Federal funds as part of the "highly qualified teacher" standards. The Arizona regulation does not describe what standards, if any, an aide is required to meet;</p>

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	<p>professional discipline in which those personnel are providing special education or related services; and</p> <p>(2) Ensure that related services personnel who deliver services in their discipline or profession--</p> <p>(i) Meet the requirements of paragraph (b)(1) of this section; and</p> <p>(ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and</p> <p>(iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.</p> <p>34 C.F.R. § 300.156</p> <p>(c) New paraprofessionals</p> <p>(1) In general</p> <p>Each local educational agency receiving assistance under this part shall ensure that all paraprofessionals hired after January 8, 2002, and working in a program supported with funds under this part shall have--</p> <p>(A) completed at least 2 years of study at an institution of higher education;</p> <p>(B) obtained an associate's (or higher) degree; or</p> <p>(C) met a rigorous standard of quality and can demonstrate, through a formal State or local academic assessment--</p> <p>(i) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or</p> <p>(ii) knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate.</p> <p>20 U.S.C.A. § 6319 (West)</p>	<p>it simply says they are not certified teachers.</p>
<p>20. "Private school" means any nonpublic educational institution where academic instruction is provided, including nonsectarian and parochial schools, that are not under the jurisdiction of the state or a public education agency.</p>	<p>Parentally-placed private school children with disabilities means children with disabilities enrolled by their parents in private, including religious, schools or facilities that meet the definition of elementary school in § 300.13 or secondary school in § 300.36, other than children with disabilities covered under §§ 300.145 through 300.147.</p> <p>34 C.F.R. § 300.130</p> <p>(a) Developing IEPs.</p> <p>(1) Before a public agency places a child with a disability in, or refers a child to, a private school or facility, the agency must initiate and conduct a meeting to develop an IEP for the child in accordance with §§ 300.320 and 300.324.</p>	<p>The Federal regulations do not separately define private school or facility, except to say the term includes religious entities. In practice, it means any school that is not public. There are numerous issues related to private schools that are not addressed in the body of these regulations, such as certification standards for private school placements by PEAs and how to provide "equitable" services (but not FAPE) to eligible students placed in private schools by</p>

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	<p>(2) The agency must ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the agency must use other methods to ensure participation by the private school or facility, including individual or conference telephone calls.</p> <p>(b) Reviewing and revising IEPs.</p> <p>(1) After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the public agency.</p> <p>(2) If the private school or facility initiates and conducts these meetings, the public agency must ensure that the parents and an agency representative--</p> <p>(i) Are involved in any decision about the child's IEP; and</p> <p>(ii) Agree to any proposed changes in the IEP before those changes are implemented.</p> <p>(c) Responsibility. Even if a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the public agency and the SEA.</p> <p>34 C.F.R. § 300.325</p>	<p>their parents.</p> <p>The definition also does not account for charter schools which may be private or non-profit corporations, but which are authorized to provide public school services and are therefore required to provide FAPE for IDEA purposes.</p>
21. "Private special education school" means a private school that is established to serve primarily students with disabilities. The school may also serve students without disabilities.	There is no Federal definition of this term. The regulations cited above state that <u>any</u> private school in which an eligible student is placed must have the staff and facilities to provide FAPE as defined by the IEP.	Since this term does not appear in the regulations below, it is not clear why it is being separately defined here. It could be eliminated.
22. "Psychiatrist" means a doctor of medicine who specializes in the study, diagnosis, treatment and prevention of mental disorders.	See regulations cited above regarding professional qualification standards.	Again, this is a generic state definition that has no parallel in Federal law. Unlike some of the other professions defined above, there is no cross reference to an Arizona law defining "psychiatrist."
23. "Public education agency" or "PEA" means a school district, charter school, accommodation school, state supported institution, or other political subdivision of the state that is responsible for providing education to children with disabilities.	<p>(a) General. Local educational agency or LEA means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools.</p> <p>(b) Educational service agencies and other public institutions or agencies. The term includes--</p> <p>(1) An <u>educational service agency</u>, as defined in § 300.12; and</p> <p>(2) Any other public institution or agency having administrative control and</p>	In this case, there are multiple Federal definitions that are substantially more complicated than the Arizona regulation, but also include different terminology that is not defined. For example, it is not clear what an "accommodation school" is under Arizona law. (I assume that is an alternate setting for kids with behavior or attendance problems.) It is also unclear what "state supported institutions" fall within the definition, such as special schools for the deaf or blind, schools

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	<p>direction of a public elementary school or secondary school, including a public nonprofit charter school that is established as an LEA under State law. (c) BIA funded schools. The term includes an elementary school or secondary school funded by the Bureau of Indian Affairs, and not subject to the jurisdiction of any SEA other than the Bureau of Indian Affairs, but only to the extent that the inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the LEA receiving assistance under the Act with the smallest student population. 34 C.F.R. § 300.28</p> <p>Public agency includes the SEA, LEAs, ESAs, <b>nonprofit public charter</b> schools that are not otherwise included as LEAs or ESAs and are not a school of an LEA or ESA, and any other political subdivisions of the State that are responsible for providing education to children with disabilities. 34 C.F.R. § 300.33</p> <p>Educational service agency means-- (a) A regional public multiservice agency-- (1) Authorized by State law to develop, manage, and provide services or programs to LEAs; (2) Recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary schools and secondary schools of the State; (b) Includes any other public institution or agency having administrative control and direction over a public elementary school or secondary school; and (c) Includes entities that meet the definition of intermediate educational unit in section 602(23) of the Act as in effect prior to June 4, 1997.  34 C.F.R. § 300.12</p>	<p>in jails, licensed children's homes or hospitals, etc.</p> <p>Although the definition section may not be the best place, it is useful to have clear rules regarding which public agencies are responsible for providing FAPE to which special populations of students.</p>
<p>24. "Screening" means an informal or formal process of determining the status of a child with respect to appropriate developmental and academic norms. Screening may include observations, family interviews, review of medical, developmental, or education records, or the administration of specific instruments identified by the test publisher as</p>	<p>The <b>screening of a student by a teacher or specialist to determine appropriate instructional strategies</b> for curriculum implementation shall not be considered to be an evaluation for eligibility for special education and related services.  34 C.F.R. § 300.302</p> <p>(a) The public agency must ensure that the <b>child is observed</b> in the child's learning environment (including the regular classroom setting) to document</p>	<p>Federal law does not separately define "screening." This state definition describes review of student data to provide additional or different instructional strategies before the child is referred under IDEA. The IDEA regulation on "response to intervention" requires documentation of such "screening" to support a decision that a child is not eligible under the IDEA. Section 300.302</p>

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<p>appropriate for use as screening tools.</p>	<p>the child's academic performance and behavior in the areas of difficulty.</p> <p>(b) The group described in § 300.306(a)(1), in determining whether a child has a specific learning disability, must decide to--</p> <p>(1) Use information from an observation in routine classroom instruction and monitoring of the child's performance that was done before the child was referred for an evaluation; or</p> <p>(2) Have at least one member of the group described in § 300.306(a)(1) conduct an observation of the child's academic performance in the regular classroom after the child has been referred for an evaluation and parental consent, consistent with § 300.300(a), is obtained.</p> <p>(c) In the case of a child of less than school age or out of school, a group member must observe the child in an environment appropriate for a child of that age.</p> <p>34 C.F.R. § 300.310</p> <p>(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in § 300.306(a)(2), must contain a statement of--</p> <p>(1) Whether the child has a specific learning disability;</p> <p>(2) The basis for making the determination, including an assurance that the determination has been made in accordance with § 300.306(c)(1);</p> <p>(3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;</p> <p>(4) The educationally relevant medical findings, if any;</p> <p>(5) Whether--</p> <p>(i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with § 300.309(a)(1); and</p> <p>(ii)(A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with § 300.309(a)(2)(i); or</p> <p>(B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with § 300.309(a)(2)(ii);</p> <p>(6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and</p> <p><b><u>(7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention--</u></b></p> <p>(i) The instructional strategies used and the student-centered data collected; and</p> <p>(ii) The documentation that the child's parents were notified about--</p>	<p>expressly distinguishes screening from a special education evaluation without defining the term.</p>

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	<p>(A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;</p> <p>(B) Strategies for increasing the child's rate of learning; and</p> <p>(C) The parents' right to request an evaluation.</p> <p>(b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.</p> <p>34 C.F.R. § 300.311</p>	
<p>25. "Special education teacher" means a teacher holding a special education certificate from the Arizona Department of Education.</p>	<p>(a) General. The SEA must establish and maintain qualifications to ensure that <b><u>personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained</u></b>, including that those personnel have the content knowledge and skills to serve children with disabilities.</p> <p>(b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that--</p> <p>(1) <b><u>Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services</u></b>; and</p> <p>(2) Ensure that related services personnel who deliver services in their discipline or profession--</p> <p>(i) Meet the requirements of paragraph (b)(1) of this section; and</p> <p>(ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and</p> <p>(iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.</p> <p>34 C.F.R. § 300.156</p> <p>(a) Requirements for special education teachers teaching core academic subjects. For any public elementary or secondary school special education teacher teaching core academic subjects, the term highly qualified has the meaning given the term in section 9101 of the ESEA and 34 CFR 200.56,</p>	<p>This definition may not be necessary, depending on whether the term continues to be used in the regulation below regarding who can provide instruction under IEPs. (See G.4 below.) If it is retained, it should be consistent with other professional certification regulations that cross reference the legal or professional standards that apply under Arizona law.</p> <p>The substantive state standards for teacher certification must be consistent with the "highly qualified teacher" requirements that apply to special education through NCLB.</p>



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	<p>except that the requirements for highly qualified also--</p> <p>(1) Include the requirements described in paragraph (b) of this section; and</p> <p>(2) Include the option for teachers to meet the requirements of section 9101 of the ESEA by meeting the requirements of paragraphs (c) and (d) of this section.</p> <p>(b) Requirements for special education teachers in general.</p> <p>(1) When used with respect to any public elementary school or secondary school special education teacher teaching in a State, highly qualified requires that--</p> <p>(i) <b><u>The teacher has obtained full State certification as a special education teacher</u></b> (including certification obtained through alternative routes to certification), or passed the State special education teacher licensing examination, and holds a license to teach in the State as a special education teacher, except that when used with respect to any teacher teaching in a public charter school, highly qualified means that the teacher meets the certification or licensing requirements, if any, set forth in the State's public charter school law;</p> <p>(ii) The teacher has not had special education certification or licensure requirements waived on an emergency, temporary, or provisional basis; and</p> <p>(iii) The teacher holds at least a bachelor's degree.</p> <p>(2) A teacher will be considered to meet the standard in paragraph (b)(1)(i) of this section if that teacher is participating in an alternative route to special education certification program under which--</p> <p>(i) The teacher--</p> <p>(A) Receives high-quality professional development that is sustained, intensive, and classroom-focused in order to have a positive and lasting impact on classroom instruction, before and while teaching;</p> <p>(B) Participates in a program of intensive supervision that consists of structured guidance and regular ongoing support for teachers or a teacher mentoring program;</p> <p>(C) Assumes functions as a teacher only for a specified period of time not to exceed three years; and</p> <p>(D) Demonstrates satisfactory progress toward full certification as prescribed by the State; and</p> <p>(ii) The State ensures, through its certification and licensure process, that the provisions in paragraph (b)(2)(i) of this section are met.</p> <p>(3) Any public elementary school or secondary school special education teacher teaching in a State, who is not teaching a core academic subject, is highly qualified if the teacher meets the requirements in paragraph (b)(1) or the requirements in (b)(1)(iii) and (b)(2) of this section.</p> <p>(c) Requirements for special education teachers teaching to alternate academic achievement standards. When used with respect to a special education teacher</p>	

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	<p>who teaches core academic subjects exclusively to children who are assessed against alternate academic achievement standards established under 34 CFR 200.1(d), highly qualified means the teacher, whether new or not new to the profession, may either--</p> <p>(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56 for any elementary, middle, or secondary school teacher who is new or not new to the profession; or</p> <p>(2) Meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher, or, in the case of instruction above the elementary level, meet the requirements of paragraph (B) or (C) of section 9101(23) of the ESEA as applied to an elementary school teacher and have subject matter knowledge appropriate to the level of instruction being provided and needed to effectively teach to those alternate academic achievement standards, as determined by the State.</p> <p>(d) Requirements for special education teachers teaching multiple subjects. Subject to paragraph (e) of this section, when used with respect to a special education teacher who teaches two or more core academic subjects exclusively to children with disabilities, highly qualified means that the teacher may either--</p> <p>(1) Meet the applicable requirements of section 9101 of the ESEA and 34 CFR 200.56(b) or (c);</p> <p>(2) In the case of a teacher who is not new to the profession, demonstrate competence in all the core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher who is not new to the profession under 34 CFR 200.56(c) which may include a single, high objective uniform State standard of evaluation (HOUSSE) covering multiple subjects; or</p> <p>(3) In the case of a new special education teacher who teaches multiple subjects and who is highly qualified in mathematics, language arts, or science, demonstrate, not later than two years after the date of employment, competence in the other core academic subjects in which the teacher teaches in the same manner as is required for an elementary, middle, or secondary school teacher under 34 CFR 200.56(c), which may include a single HOUSSE covering multiple subjects.</p> <p>(e) Separate HOUSSE standards for special education teachers. Provided that any adaptations of the State's HOUSSE would not establish a lower standard for the content knowledge requirements for special education teachers and meet all the requirements for a HOUSSE for regular education teachers--</p> <p>(1) A State may develop a separate HOUSSE for special education teachers; and</p> <p>(2) The standards described in paragraph (e)(1) of this section may include single HOUSSE evaluations that cover multiple subjects.</p>	

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	<p>(f) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint under §§ 300.151 through 300.153 about staff qualifications with the SEA as provided for under this part.</p> <p>(g) Applicability of definition to ESEA; and clarification of new special education teacher.</p> <p>(1) A teacher who is highly qualified under this section is considered highly qualified for purposes of the ESEA.</p> <p>(2) For purposes of § 300.18(d)(3), a fully certified regular education teacher who subsequently becomes fully certified or licensed as a special education teacher is a new special education teacher when first hired as a special education teacher.</p> <p>(h) Private school teachers not covered. The requirements in this section do not apply to teachers hired by private elementary schools and secondary schools including private school teachers hired or contracted by LEAs to provide equitable services to parentally-placed private school children with disabilities under § 300.138.</p> <p>34 C.F.R. § 300.18</p>	
<p>26. "Suspension" means a disciplinary removal from a child's current placement that results in a <b>failure to provide services</b> to the extent necessary to enable the child to progress appropriately in the general curriculum and advance toward achieving the goals set out in the child's IEP. The term does not include disciplinary actions or changes in placement through the IEP process if the child continues to receive the services described above. The term does include actions such as "in-school" and "going home for the rest of the day" removals if the child does not receive the services described above.</p>	<p>(a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.</p> <p>(b) General.</p> <p>(1) School personnel under this section <b>may remove a child with a disability</b> who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under § 300.536).</p> <p>(2) <b><u>After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.</u></b></p> <p>(c) Additional authority. For disciplinary changes in placement that would</p>	<p>This definition does not separately appear in Federal law; however, it mirrors the terminology of Federal regulation regarding "removal from the current placement" based on a violation of "code of student conduct." The Arizona regulations below refer to both "suspension and expulsion," however, only the former term is defined. Given the nuances of Federal law regarding the length of the removal and whether the cumulative amount of removal constitutes a change in placement or a "manifestation" of a disability, it would be safer to simply incorporate the Federal regulations by reference.</p> <p>The original intent of this regulation should be reconsidered for necessity and greater clarity of effect. If the regulation on discipline below is sufficiently clear, this</p>

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	<p>exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.</p> <p>(d) Services.</p> <p>(1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must--</p> <p>(i) Continue to receive educational services, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and</p> <p>(ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.</p> <p>(2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.</p> <p>(3) A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.</p> <p>(4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under § 300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.</p> <p>(5) If the removal is a change of placement under § 300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.</p> <p>34 C.F.R. § 300.530</p> <p>(a) For purposes of removals of a child with a disability from the child's current educational placement under §§ 300.530 through 300.535, a change of placement occurs if--</p> <p>(1) The removal is for more than 10 consecutive school days; or</p> <p>(2) The child has been subjected to a series of removals that constitute a pattern--</p>	<p>definition may not be necessary.</p>

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	<p>(i) Because the series of removals total more than 10 school days in a school year;</p> <p>(ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and</p> <p>(iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.</p> <p>(b)(1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.</p> <p>(2) This determination is subject to review through due process and judicial proceedings.</p> <p>34 C.F.R. § 300.536</p>	
<p>C. Public Awareness.</p> <p>1. Each public education agency shall <b>inform the general public</b> and all parents, within the public education agency's <b>boundaries of responsibility</b>, of the availability of special education services for students aged 3 through 21 years and how to access those services. This includes information regarding early intervention services for children aged birth through 2 years.</p> <p>2. Each public education agency is responsible for public awareness within their enrolled population (including the families of enrolled students).</p> <p>3. School districts are responsible for public awareness in private schools located within their geographical boundaries.</p>	<p>(a) General.</p> <p>(1) The State must have in effect policies and procedures to ensure that--</p> <p>(i) <b>All children with disabilities residing in the State</b>, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, <b>are identified, located, and evaluated</b>; and</p> <p>(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.</p> <p>(b) Use of term developmental delay. The following provisions apply with respect to implementing the child find requirements of this section:</p> <p>(1) A State that adopts a definition of developmental delay under § 300.8(b) determines whether the term applies to children aged three through nine, or to a subset of that age range (e.g., ages three through five).</p> <p>(2) A State may not require an LEA to adopt and use the term developmental delay for any children within its jurisdiction.</p> <p>(3) If an LEA uses the term developmental delay for children described in § 300.8(b), the LEA must conform to both the State's definition of that term and to the age range that has been adopted by the State.</p> <p>(4) If a State does not adopt the term developmental delay, an LEA may not independently use that term as a basis for establishing a child's eligibility under this part.</p> <p>(c) Other children in child find. Child find also must include--</p> <p>(1) Children who are suspected of being a child with a disability under § 300.8 and in need of special education, even though they are advancing from grade to grade; and</p> <p>(2) Highly mobile children, including migrant children.</p> <p>(d) Construction. Nothing in the Act requires that children be classified by</p>	<p>The "child find" requirements under the IDEA regulations go beyond a general public awareness effort by the PEA within its boundaries. The Federal obligation involves identifying, locating, and evaluating children with disabilities and in meeting with representatives of the private schools to agree upon an "equitable service plan" for private school students with disabilities. There does not appear to be a federal rule that specifically requires a "public awareness" campaign.</p>

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	<p>their disability so long as each child who has a disability that is listed in § 300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.</p> <p>34 C.F.R. § 300.111</p> <p>(a) General. <b><u>Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools</u></b> located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and §§ 300.111 and 300.201.</p> <p>(b) Child find design. The child find process must be designed to ensure--</p> <p>(1) The equitable participation of parentally-placed private school children; and</p> <p>(2) An accurate count of those children.</p> <p>(c) Activities. In carrying out the requirements of this section, the LEA, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency's public school children.</p> <p>(d) Cost. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under § 300.133.</p> <p>(e) Completion period. The child find process must be completed in a time period comparable to that for students attending public schools in the LEA consistent with § 300.301.</p> <p>(f) Out-of-State children. Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.</p> <p>34 C.F.R. § 300.131</p>	
<p>D. Child Identification and Referral.</p> <p>1. Each public education agency shall establish, implement, and disseminate to its school-based personnel and all parents, within the public education agency <b><u>boundaries of responsibility, written procedures for the identification and referral of all children with disabilities,</u></b> aged birth through 21, including children with disabilities attending private schools</p>	<p>The LEA, in providing for the education of children with disabilities within its jurisdiction, must <b><u>have in effect policies, procedures, and programs</u></b> that are consistent with the State policies and procedures established under §§ 300.101 through 300.163, and §§ 300.165 through 300.174.</p> <p>34 C.F.R. § 300.201</p> <p>(a) General. <b><u>Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools</u></b> located in the school</p>	<p>This state regulation requires each PEA to have written procedures specifically for identification and referral of children with disabilities. The Federal regulation in Sec. 300.201 more generally requires an LEA to have all policies, procedures, and programs necessary to comply with all the provisions of the IDEA regulations. This regulation does not conflict from the Federal rule, but it does not seem to add anything either.</p>

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<p>and home schools, regardless of the severity of their disability.</p>	<p>district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and §§ 300.111 and 300.201.</p> <p>(b) Child find design. The child find process must be designed to ensure--</p> <p>(1) The equitable participation of parentally-placed private school children; and</p> <p>(2) An accurate count of those children.</p> <p>(c) Activities. In carrying out the requirements of this section, the LEA, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency's public school children.</p> <p>(d) Cost. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under § 300.133.</p> <p>(e) Completion period. The child find process must be completed in a time period comparable to that for students attending public schools in the LEA consistent with § 300.301.</p> <p>(f) Out-of-State children. Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.</p> <p>34 C.F.R. § 300.131</p> <p>(a) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with § 300.503, that describes any evaluation procedures the agency proposes to conduct.</p> <p>(b) Conduct of evaluation. In conducting the evaluation, the public agency must--</p> <p>(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining--</p> <p>(i) Whether the child is a child with a disability under § 300.8; and</p> <p>(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);</p> <p>(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and</p> <p>(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.</p> <p>(c) Other evaluation procedures. Each public agency must ensure that--</p>	

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	<p>(1) Assessments and other evaluation materials used to assess a child under this part--</p> <p>(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;</p> <p>(ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;</p> <p>(iii) Are used for the purposes for which the assessments or measures are valid and reliable;</p> <p>(iv) Are administered by trained and knowledgeable personnel; and</p> <p>(v) Are administered in accordance with any instructions provided by the producer of the assessments.</p> <p>(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.</p> <p>(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).</p> <p>(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;</p> <p>(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with § 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.</p> <p>(6) In evaluating each child with a disability under §§ 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.</p> <p>(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.</p> <p>34 C.F.R. § 300.304</p>	



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2. Each public education agency <u>will require all school-based staff to review</u> the written procedures related to child identification and referral on an annual basis. The public education agency shall maintain documentation of staff review.	(a) General. The SEA must establish and maintain qualifications to ensure that personnel necessary to carry out the purposes of this part are appropriately and <u>adequately prepared and trained</u> , including that those personnel have the content knowledge and skills to serve children with disabilities. 34 C.F.R. § 300.156	This regulation emphasizes that, as part of the training and preparation that staff must have in order to provide evaluation, instruction, and related services, the staff must also review the PEA policies on identification and referral. A single regulation on staff training that lists all of the necessary knowledge and skills might be more clear.
3. <del>Procedures for child identification and referral shall meet the requirements of the IDEA and regulations, A.R.S. Title 15, Chapter 7, Article 4 and these rules.</del>	The LEA, in providing for the education of children with disabilities within its jurisdiction, must <u>have in effect policies, procedures, and programs</u> that are consistent with the State policies and procedures established under §§ 300.101 through 300.163, and §§ 300.165 through 300.174. 34 C.F.R. § 300.201	This regulation repeats the incorporation of Federal rules in A. and B. above and appears to be redundant in this provision.
4. The public education agency responsible for child identification activities is the school district in which the parents reside unless: a. The student is enrolled in a charter school or public education agency that is not a school district. In that event, the charter school or public education agency is responsible for child identification activities; b. The student is enrolled in a non-profit private school. In that event, the school district within whose boundaries the private school is located is responsible for child identification activities.	(a) General. Local educational agency or LEA means a public board of education or other <u>public authority legally constituted within a State</u> for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for a combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary schools or secondary schools. (b) Educational service agencies and other public institutions or agencies. The term includes-- (1) An educational service agency, as defined in § 300.12; and (2) Any other public institution or agency having administrative control and direction of a public elementary school or secondary school, including a public nonprofit charter school that is established as an LEA under State law.  34 C.F.R. § 300.28  (a) General. To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools <u>located in the school district served by the LEA</u> , provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with § 300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in §§ 300.190 through 300.198. (b) Services plan for parentally-placed private school children with disabilities. In accordance with paragraph (a) of this section and §§ 300.137	In general, the IDEA regulations leave it up to each State to determine how to divide responsibility for providing education. The Arizona regulation clarifies that the general rule is that the district of parent residence determines what public agency has the duty to identify students with disabilities. The rest of the rule states exceptions for charter schools and PEAs that are not school districts and also for private nonprofit schools.  It might be useful to cross reference the general Arizona statute that governs school attendance for regular education. It also might be useful to list the other public education agencies that are not school districts and possibly the circumstances under which enrollment in such an agency would be appropriate or necessary.

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	<p>through 300.139, a services plan must be developed and implemented for each private school child with a disability who has been designated by the LEA in which the private school is located to receive special education and related services under this part.</p> <p>(c) Record keeping. Each LEA must maintain in its records, and provide to the SEA, the following information related to parentally-placed private school children covered under §§ 300.130 through 300.144:</p> <p>(1) The number of children evaluated;</p> <p>(2) The number of children determined to be children with disabilities; and</p> <p>(3) The number of children served.</p> <p>34 C.F.R. § 300.132</p>	
<p>5. Identification (screening for possible disabilities) shall be completed <b><u>within 45 calendar days</u></b> after:</p> <p>a. Entry of each preschool or kindergarten student and any student enrolling without appropriate records of screening, evaluation, and progress in school; or</p> <p>b. Notification to the public education agency by parents of concerns regarding developmental or educational progress by their child aged 3 years through 21 years.</p>	<p>(a) General. Each public agency must conduct a full and individual initial evaluation, in accordance with §§ 300.304 through 300.306, before the initial provision of special education and related services to a child with a disability under this part.</p> <p>(b) Request for initial evaluation. Consistent with the consent requirements in § 300.300, either a parent of a child or a public agency may initiate a request for an initial evaluation to determine if the child is a child with a disability.</p> <p>(c) Procedures for initial evaluation. The initial evaluation--</p> <p>(1)(i) Must be conducted <b><u>within 60 days</u></b> of receiving parental consent for the evaluation; or</p> <p>(ii) If the <b><u>State establishes a timeframe</u></b> within which the evaluation must be conducted, within that timeframe; and</p> <p>(2) Must consist of procedures--</p> <p>(i) To determine if the child is a child with a disability under § 300.8; and</p> <p>(ii) To determine the educational needs of the child.</p> <p>(d) Exception. The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if--</p> <p>(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or</p> <p>(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under § 300.8.</p> <p>(e) The exception in paragraph (d)(2) of this section applies only if the subsequent public agency is making sufficient progress to ensure a prompt completion of the evaluation, and the parent and subsequent public agency agree to a specific time when the evaluation will be completed.</p> <p>34 C.F.R. § 300.301</p>	<p>This regulation establishes how long the PEA has to perform necessary evaluations and determine whether a child is eligible for Special Education and related services. It is a shorter time period than the maximum required in the IDEA regulation, but the same regulation expressly gives States the discretion to set a different time period.</p> <p>This regulation also states that each student that enrolls without previously having been screened or evaluated must go through the "identification" process with 45 days. The IDEA regulations do not require automatic screening or evaluation of every child, unless the parents ask for evaluation or the teacher suspects a learning disability based on observation of the student. This rule appears to exceed Federal requirements.</p> <p>The Federal 60-day time period begins to run from the date of parental consent for the evaluation. In the Arizona regulation, 45 days begins to run from the date the PEA is notified of parental concerns regarding development and progress of the student. Since an expression of concern is not the same as written consent to a specific evaluation plan, the rules are not consistent.</p>

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		This regulation seems to create a pre-referral process and time period that is not required by Federal law and which is different than the 60-day period for completing a full evaluation under § 300-301(c).
<p>6. <b>Screening procedures</b> shall include vision and hearing status and consideration of the following areas: cognitive or academic, communication, motor, social or behavioral, and adaptive development. Screening does not include detailed individualized comprehensive evaluation procedures.</p>	<p>The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation <b><u>shall not be considered to be an evaluation</u></b> for eligibility for special education and related services.</p> <p>34 C.F.R. § 300.302</p> <p>(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).</p> <p>(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;</p> <p>34 C.F.R. § 300.304</p> <p>(a) For a child suspected of having a specific learning disability, the documentation of the determination of eligibility, as required in § 300.306(a)(2), must contain a statement of--</p> <p>(1) Whether the child has a specific learning disability;</p> <p>(2) The basis for making the determination, including an assurance that the determination has been made in accordance with § 300.306(c)(1);</p> <p>(3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;</p> <p>(4) The educationally relevant medical findings, if any;</p> <p>(5) Whether--</p> <p>(i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with § 300.309(a)(1); and</p> <p>(ii)(A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with § 300.309(a)(2)(i); or</p> <p>(B) The child exhibits a pattern of strengths and weaknesses in performance,</p>	<p>This regulation appears to clarify that, although screening is not the same as referral for special education evaluation, it may consider many of the same areas that constitute suspected areas of disability. It is not clear what kinds of data or information should be considered in a screening process or who makes the determination as to the scope of the screening. If the intent is keep particular types of students out of special education, it would be helpful to more clearly describe when screening is more appropriate than "detailed individualized comprehensive evaluation procedures."</p> <p>In addition, screening procedures actually used should be adequately documented in terms of the child's "response to intervention" in order to avoid complaints of failure to properly assess in all areas of suspected disability.</p>

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	<p>achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with § 300.309(a)(2)(ii);</p> <p>(6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and</p> <p><b><u>(7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention--</u></b></p> <p>(i) The instructional strategies used and the student-centered data collected; and</p> <p>(ii) The documentation that the child's parents were notified about--</p> <p>(A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;</p> <p>(B) Strategies for increasing the child's rate of learning; and</p> <p>(C) The parents' right to request an evaluation.</p> <p>(b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.</p> <p>34 C.F.R. § 300.311</p>	
<p>7. For a student transferring into a school; the public education agency shall review enrollment data and educational performance in the prior school. If there is a history of special education for a student not currently eligible for special education, or poor progress, the name of the student shall be submitted to the administrator for consideration of the need for a referral for a full and individual evaluation or other services.</p>	<p>(c) Initial IEPs; provision of services. Each public agency must ensure that--</p> <p>(1) A meeting to develop an IEP for a child is conducted within 30 days of a determination that the child needs special education and related services; and</p> <p>(2) As soon as possible following development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.</p> <p>(d) Accessibility of child's IEP to teachers and others. Each public agency must ensure that--</p> <p>(1) The child's IEP is accessible to each regular education teacher, special education teacher, related services provider, and any other service provider who is responsible for its implementation; and</p> <p>(2) Each teacher and provider described in paragraph (d)(1) of this section is informed of--</p> <p>(i) His or her specific responsibilities related to implementing the child's IEP; and</p> <p>(ii) The specific accommodations, modifications, and supports that must be provided for the child in accordance with the IEP.</p> <p>(e) IEPs for children who transfer public agencies in the same State. If a child with a disability (who had an IEP that was in effect in a previous public</p>	<p>This Arizona appears to apply to a transfer student who does not have a current IEP from the sending school or district, but who is suspected of having a learning disability. It is not clear why this situation is different than the new student screening requirement in 5.a above. It would be more clear to set out each scenario and its consequences. That is, a procedure for continuing existing IEP services and convening a new IEP team and another procedure for screening and identifying all other new students for possible learning disabilities.</p>

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	<p>agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either--</p> <p>(1) Adopts the child's IEP from the previous public agency; or</p> <p>(2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§ 300.320 through 300.324.</p> <p>(f) IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency--</p> <p>(1) Conducts an evaluation pursuant to §§ 300.304 through 300.306 (if determined to be necessary by the new public agency); and</p> <p>(2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§ 300.320 through 300.324.</p> <p>(g) Transmittal of records. To facilitate the transition for a child described in paragraphs (e) and (f) of this section--</p> <p>(1) The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR 99.31(a)(2); and</p> <p>(2) The previous public agency in which the child was enrolled must take reasonable steps to promptly respond to the request from the new public agency.</p> <p>34 C.F.R. § 300.323</p>	
<p>8. If <b>a concern</b> about a student is identified through screening procedures or through review of records, the public education agency shall notify the parents of the student of the concern within 10 school days and inform them of the public education agency procedures to follow-up on the student's needs.</p>	<p>(a) General.</p> <p>(1) The State must have in effect policies and procedures to ensure that--</p> <p>(i) All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are <b>identified, located, and evaluated</b>; and</p> <p>(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.</p>	<p>This regulation suggests that the screening procedures will be part of the overall child find process the PEA uses to identify students with suspected disabilities. The current language is ambiguous in terms of the particular evidence or behavior that might cause a sufficient concern to make a referral to special education and then seek parent consent to evaluate.</p>

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	<p>34 C.F.R. § 300.111</p> <p>(a) <b><u>Parental consent for initial evaluation.</u></b>  (1)(i) The public agency proposing to conduct an initial evaluation to determine if a child qualifies as a child with a disability under § 300.8 must, after providing notice consistent with §§ 300.503 and 300.504, obtain informed consent, consistent with § 300.9, from the parent of the child before conducting the evaluation.  (ii) Parental consent for initial evaluation must not be construed as consent for initial provision of special education and related services.  (iii) The public agency must make reasonable efforts to obtain the informed consent from the parent for an initial evaluation to determine whether the child is a child with a disability.</p> <p>34 C.F.R. § 300.300</p>	<p>It might be useful to set forth the elements of a comprehensive child find process and include information obtained through particular screening procedures as part of child find.</p> <p>The 10-day parent notification requirement is not in Federal law and it is not clear when the 10 days begins to run. That is, it may be difficult to determine exactly when a "concern" first arose.</p>
<p>9. Each public education agency shall maintain <b><u>documentation</u></b> of the identification procedures utilized, the <b><u>dates of entry</u></b> into school or <b><u>notification</u></b> by parents made pursuant to subsection (D)(5), and the dates of screening. The results shall be maintained in the student's permanent records in a <b><u>location</u></b> designated by the administrator. In the case of a student not enrolled, the results shall be maintained in a location designated by the administrator.</p>	<p>The screening of a student by a teacher or specialist to determine appropriate instructional strategies for curriculum implementation <b><u>shall not be considered to be an evaluation</u></b> for eligibility for special education and related services.</p> <p>34 C.F.R. § 300.302</p> <p>(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).  (4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;</p> <p>34 C.F.R. § 300.304</p> <p>(a) For a child suspected of having a specific learning disability, the <b><u>documentation of the determination of eligibility</u></b>, as required in § 300.306(a)(2), must contain a statement of--  (1) Whether the child has a specific learning disability;  (2) The basis for making the determination, including an assurance that the determination has been made in accordance with § 300.306(c)(1);</p>	<p>This Arizona regulation is consistent with the Federal requirement that the group making the eligibility determination document the information they considered and why they drew their conclusions regarding eligibility. The state rule also clarifies that the PEA must not only have appropriate procedures in place, it must actually use those procedures as appropriate to identify the needs of an individual student. Clear documentation is the best defense against a complaint of inadequate child find and identification procedures.</p> <p>The regulation also specifies particular data points that must be documented and how the documentation should be stored by the PEA. While not required by Federal law, that is the kind of clarification or specificity that regulations should provide.</p> <p>[Editorial note: regulations are only necessary if they make a statute more clear or specific. If they only repeat a rule that exists somewhere else or they are too general, then they serve no purpose.]</p>

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	<p>(3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;</p> <p>(4) The educationally relevant medical findings, if any;</p> <p>(5) Whether--</p> <p>(i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with § 300.309(a)(1); and</p> <p>(ii)(A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with § 300.309(a)(2)(i); or</p> <p>(B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with § 300.309(a)(2)(ii);</p> <p><b><u>(6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and</u></b></p> <p>(7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention--</p> <p>(i) The instructional strategies used and the student-centered data collected; and</p> <p>(ii) The documentation that the child's parents were notified about--</p> <p>(A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;</p> <p>(B) Strategies for increasing the child's rate of learning; and</p> <p>(C) The parents' right to request an evaluation.</p> <p>(b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.</p> <p>34 C.F.R. § 300.311</p>	
<p>10. If the identification process indicates a possible disability, the name of the student shall be submitted to the <b><u>administrator</u></b> for consideration of the need for a referral for a full and individual evaluation or other services. A parent or a student may request an evaluation of the student. For parentally-placed private school students the school district within whose boundaries the non-profit private school is located is responsible</p>	<p>(a) General. Each public agency must conduct a full and individual initial evaluation, in accordance with §§ 300.304 through 300.306, before the initial provision of special education and related services to a child with a disability under this part.</p> <p>(b) Request for initial evaluation. Consistent with the consent requirements in § 300.300, <b><u>either a parent of a child or a public agency may initiate a request</u></b> for an initial evaluation to determine if the child is a child with a disability.</p> <p>34 C.F.R. § 300.301</p>	<p>This regulation is repetitive of Federal law to the extent that a parent may request an initial evaluation and also in stating that the PEA where a private school is located is responsible for evaluation.</p> <p>However, the regulation is specific in requiring that the Special Education <b><u>director</u></b> for the PEA must decide whether to refer the student for a full evaluation based on the</p>

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<p>for such evaluation.</p>	<p>(a) General. Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in <b><u>private, including religious, elementary schools and secondary schools located in the school district</u></b> served by the LEA, in accordance with paragraphs (b) through (e) of this section, and §§ 300.111 and 300.201.</p> <p>34 C.F.R. § 300.131</p> <p>(a) General. To the extent consistent with the number and location of children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools <b><u>located in the school district served by the LEA</u></b>, provision is made for the participation of those children in the program assisted or carried out under Part B of the Act by providing them with special education and related services, including direct services determined in accordance with § 300.137, unless the Secretary has arranged for services to those children under the by-pass provisions in §§ 300.190 through 300.198.</p> <p>34 C.F.R. § 300.132</p> <p>(b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions.</p> <p>34 C.F.R. § 300.311</p>	<p>identification process results. Federal law does not specify who may act on behalf of a PEA in initiating a request. Arizona law is more restrictive in a manner that could raise personnel issues if staff do not follow the necessary chain of command.</p>
<p>11. If, after consultation with the parent, the responsible public education agency determines that a full and individual evaluation is not warranted, the public education agency shall <b><u>provide prior written notice and procedural safeguards</u></b> notice to the parent in a timely manner.</p>	<p>(a) For a child suspected of having a specific learning disability, the <b><u>documentation of the determination of eligibility, as required in § 300.306(a)(2), must contain a statement of--</u></b></p> <p>(1) Whether the child has a specific learning disability;</p> <p>(2) The basis for making the determination, including an assurance that the determination has been made in accordance with § 300.306(c)(1);</p> <p>(3) The relevant behavior, if any, noted during the observation of the child and the relationship of that behavior to the child's academic functioning;</p> <p>(4) The educationally relevant medical findings, if any;</p> <p>(5) Whether--</p> <p>(i) The child does not achieve adequately for the child's age or to meet State-approved grade-level standards consistent with § 300.309(a)(1); and</p> <p>(ii)(A) The child does not make sufficient progress to meet age or State-approved grade-level standards consistent with § 300.309(a)(2)(i); or</p>	<p>This regulation seems consistent with Federal rule and makes clear that the parent must get adequate notice of the reasons supporting the determination that a full evaluation is not necessary and of the procedural safeguards. The state rule makes clear that these procedural rights exist after the screening/identification procedures have been used but before any full assessment has been performed. Federal rules are substantially more specific as to what must be considered and documented if the PEA is not going to refer for full evaluation.</p>



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	<p>(B) The child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative to age, State-approved grade level standards or intellectual development consistent with § 300.309(a)(2)(ii);</p> <p>(6) The determination of the group concerning the effects of a visual, hearing, or motor disability; mental retardation; emotional disturbance; cultural factors; environmental or economic disadvantage; or limited English proficiency on the child's achievement level; and</p> <p>(7) If the child has participated in a process that assesses the child's response to scientific, research-based intervention--</p> <p>(i) The instructional strategies used and the student-centered data collected; and</p> <p>(ii) The <b>documentation that the child's parents were notified about--</b></p> <p>(A) The State's policies regarding the amount and nature of student performance data that would be collected and the general education services that would be provided;</p> <p>(B) Strategies for increasing the child's rate of learning; and</p> <p>(C) The parents' right to request an evaluation.</p> <p>(b) Each group member must certify in writing whether the report reflects the member's conclusion. If it does not reflect the member's conclusion, the group member must submit a separate statement presenting the member's conclusions. 34 C.F.R. § 300.311</p> <p>(a) General. Upon completion of the administration of assessments and other evaluation measures--</p> <p>(1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in § 300.8, in accordance with paragraph (c) of this section and the educational needs of the child; and</p> <p>(2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.</p> <p>(b) Special rule for eligibility determination. A child must not be determined to be a child with a disability under this part--</p> <p>(1) If the determinant factor for that determination is--</p> <p>(i) Lack of appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the ESEA);</p> <p>(ii) Lack of appropriate instruction in math; or</p> <p>(iii) Limited English proficiency; and</p> <p>(2) If the child does not otherwise meet the eligibility criteria under § 300.8(a).</p> <p>(c) Procedures for determining eligibility and educational need.</p> <p>(1) In interpreting evaluation data for the purpose of determining if a child is a child with a disability under § 300.8, and the educational needs of the child,</p>	

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	<p>each public agency must--</p> <p>(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior; and</p> <p>(ii) Ensure that information obtained from all of these sources is documented and carefully considered.</p> <p>(2) If a determination is made that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with §§ 300.320 through 300.324.</p> <p>34 C.F.R. § 300.306</p>	
<p>E. Evaluation/re-evaluation.</p> <p>1. Each public education agency shall establish, implement, disseminate to its school-based personnel, and make available to parents within its <b>boundaries of responsibility</b>, written procedures for the initial full and individual evaluation of students suspected of having a disability, and for the re-evaluation of students previously identified as being eligible for special education.</p>	<p>(a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311--</p> <p>(1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or</p> <p>(2) If the child's parent or teacher requests a reevaluation.</p> <p>(b) Limitation. A reevaluation conducted under paragraph (a) of this section--</p> <p>(1) May occur not more than once a year, unless the parent and the public agency agree otherwise; and</p> <p>(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.</p> <p>34 C.F.R. § 300.303</p> <p>(a) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with § 300.503, that describes any evaluation procedures the agency proposes to conduct.</p> <p>(b) Conduct of evaluation. In conducting the evaluation, the public agency must--</p> <p>(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining--</p> <p>(i) Whether the child is a child with a disability under § 300.8; and</p> <p>(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);</p> <p>(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an</p>	<p>The Arizona regulation requires the PEA to "establish, implement, and disseminate" evaluation procedures. The Federal rule only requires "notice" to parents and staff by the PEA of the PEA's evaluation and re-evaluation procedures. However, the Federal rule implies that any procedure of which parents and staff are notified as already been "established" and will also be implemented. It therefore not clear that this regulation adds anything to existing Federal law .</p>

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	<p>appropriate educational program for the child; and</p> <p>(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.</p> <p>(c) Other evaluation procedures. Each public agency must ensure that--</p> <p>(1) Assessments and other evaluation materials used to assess a child under this part--</p> <p>(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;</p> <p>(ii) Are provided and administered in the child's native language or other mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;</p> <p>(iii) Are used for the purposes for which the assessments or measures are valid and reliable;</p> <p>(iv) Are administered by trained and knowledgeable personnel; and</p> <p>(v) Are administered in accordance with any instructions provided by the producer of the assessments.</p> <p>(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.</p> <p>(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).</p> <p>(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;</p> <p>(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with § 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.</p> <p>(6) In evaluating each child with a disability under §§ 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.</p> <p>(7) Assessment tools and strategies that provide relevant information that</p>	

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	directly assists persons in determining the educational needs of the child are provided. 34 C.F.R. § 300.304	
<del>2. Procedures for the initial full and individual evaluation of children suspected of having a disability and for the re-evaluation of students with disabilities shall meet the requirements of IDEA and regulations, and state statutes and State Board of Education rules.</del>	All the requirements of the IDEA and its regulations are conditions of the funding received from the Federal government.  34 C.F.R. § 300.301-306	This regulation is redundant and unnecessary in that it does not clarify or make more specific any statute.
3. The initial evaluation of a child being considered for special education, or the re-evaluation per a parental request of a student already receiving special education services, shall be completed as soon as possible, but shall not exceed 60 calendar days from receipt of informed written consent. If the public education agency initiates the evaluation, the 60-day period shall commence with the date of receipt of informed written consent and shall conclude with the date of the <b>Multidisciplinary Evaluation Team (MET)</b> determination of eligibility. If the parent requests the evaluation and the MET concurs, the 60-day period shall commence with the date that the written parental request was received by the public education agency and shall conclude with the date of the MET determination of eligibility.	(c) Procedures for initial evaluation. The initial evaluation-- (1)(i) Must be conducted within 60 days of receiving parental consent for the evaluation; or (ii) If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe; and (2) Must consist of procedures-- (i) To determine if the child is a child with a disability under § 300.8; and (ii) To determine the educational needs of the child. 34 C.F.R. § 300.301  (a) General. Upon completion of the administration of assessments and other evaluation measures-- (1) A group of qualified professionals and the parent of the child determines whether the child is a child with a disability, as defined in § 300.8, in accordance with paragraph (c) of this section and the educational needs of the child; and (2) The public agency provides a copy of the evaluation report and the documentation of determination of eligibility at no cost to the parent.  34 C.F.R. § 300.306	This regulation initially restates rule in Federal law, but then goes on to separately restate the rule in the context of a PEA-initiated referral and a parent-initiated referral. Since the 60 days begins to run from the date of parental consent to evaluation, regardless of the source of the referral, the regulation seems redundant and therefore unnecessary.  The term "Multidisciplinary Evaluation Team (MET)" does not appear in Federal law and is not defined elsewhere in Arizona regulations. It seems clear, however, that it describes the "group of qualified professionals and the parent of the child" that is the group authorized to make eligibility determinations in the Federal regulation.
4. The 60-day evaluation period may be extended for an additional 30 days, provided it is in the best interest of the child, and the parents and PEA agree in writing to such an extension. Neither the 60-day evaluation period nor any extension shall cause a re-evaluation to exceed the time-lines for a re-evaluation within three years of the previous evaluation.	(c) Procedures for initial evaluation. The initial evaluation-- (1)(i) Must be conducted within 60 days of receiving parental consent for the evaluation; or (ii) <b>If the State establishes a timeframe within which the evaluation must be conducted, within that timeframe;</b> and (2) Must consist of procedures-- (i) To determine if the child is a child with a disability under § 300.8; and (ii) To determine the educational needs of the child.	This regulation utilizes the discretion that States have under the Federal regulation to establish a different timeframe within which the initial evaluation must be conducted. Although this rule allows a longer time period than prescribed by the Federal rule, it requires parental consent to the extension and some demonstration that delay is in the child's best interest.

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	34 C.F.R. § 300.301	The rule further states it does not apply to 3 year re-evaluations. However, that may be unnecessary since the rule appears to apply only to initial evaluations.
5. The public education agency may accept current information about the student from another state, public agency, public education agency, or independent evaluator. In such instances, the Multidisciplinary Evaluation Team shall be responsible for reviewing and approving or supplementing an evaluation to meet the requirements identified in subsections (E)(1) through (7).	<p>(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with § 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.</p> <p>34 C.F.R. § 300.304</p> <p>(d) Exception. The timeframe described in paragraph (c)(1) of this section does not apply to a public agency if--</p> <p>(1) The parent of a child repeatedly fails or refuses to produce the child for the evaluation; or</p> <p>(2) A child enrolls in a school of another public agency after the relevant timeframe in paragraph (c)(1) of this section has begun, and prior to a determination by the child's previous public agency as to whether the child is a child with a disability under § 300.8.</p> <p>34 C.F.R. § 300.301</p>	<p>This regulation says that a PEA "may accept" information from another agency or source and, if accepted, the MET shall review it in order to approve or supplement it for purposes of completing an evaluation. The Federal law is stated in more mandatory terms or assumes that assessments from other agencies will be coordinated "as necessary."</p> <p>If there are specific circumstances under which such information from other agencies should not be considered or should be given limited weight by the MET, they should be stated.</p>
6. For the following disabilities, the full and individual initial evaluation shall include: a. Emotional disability: verification of a disorder by a psychiatrist, licensed psychologist, or a certified school psychologist. b. Hearing impairment: i. An audiological evaluation by an audiologist, and ii. An evaluation of communication/language proficiency. c. Other health impairment: verification of a health impairment by a doctor of medicine. d. Specific learning disability: a determination of whether the child exhibits a pattern of strengths and weaknesses in performance, achievement, or both, relative	<p>(a) General.</p> <p>(1) Child with a disability means a child evaluated in accordance with §§ 300.304 through 300.311 as having mental retardation, a hearing impairment (including deafness), a speech or language impairment, a visual impairment (including blindness), a serious emotional disturbance (referred to in this part as "emotional disturbance"), an orthopedic impairment, autism, traumatic brain injury, another health impairment, a specific learning disability, deaf-blindness, or multiple disabilities, and who, by reason thereof, needs special education and related services.</p> <p>(2)(i) Subject to paragraph (a)(2)(ii) of this section, if it is determined, through an appropriate evaluation under §§ 300.304 through 300.311, that a child has one of the disabilities identified in paragraph (a)(1) of this section, but only needs a related service and not special education, the child is not a child with a disability under this part.</p> <p>(ii) If, consistent with § 300.39(a)(2), the related service required by the child is considered special education rather than a related service under State standards, the child would be determined to be a child with a disability under</p>	<p>The Arizona regulation basically lists every disability category that is included under Federal law but adds the type of professional or expert who must conduct the evaluation of that particular disability. These rules essentially combined the disability categories with the more general Federal rules that require that anyone providing evaluation or services to an eligible child must possess the necessary training and certifications to perform the functions assigned to them.</p> <p>Consistent with the comments to the various professional definitions above, this regulation is possibly redundant in light of other Arizona laws governing the various professions and occupations listed. It would probably suffice</p>

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<p>to age, state-approved grade-level standards, or intellectual development that meets the public education agency criteria through one of the following methods:</p> <ul style="list-style-type: none"> <li>i. A discrepancy between achievement and ability;</li> <li>ii. The child's response to scientific, research-based interventions; or</li> <li>iii. Other alternative research-based procedures.</li> </ul> <p>e. Orthopedic impairment: verification of the physical disability by a doctor of medicine.</p> <p>f. Speech/language impairment: an evaluation by a certified speech-language therapist.</p> <p>g. For students whose speech impairments appear to be limited to articulation, voice, or fluency problems, the written evaluation may be limited to:</p> <ul style="list-style-type: none"> <li>i. An audiometric screening within the past calendar year,</li> <li>ii. A review of academic history and classroom functioning,</li> <li>iii. An assessment of the speech problem by a speech therapist, or</li> <li>iv. An assessment of the student's functional communication skills.</li> </ul> <p>h. Traumatic brain injury: verification of the injury by a doctor of medicine.</p> <p>i. Visual impairment: verification of a visual impairment by an ophthalmologist or optometrist.</p>	<p>paragraph (a)(1) of this section.</p> <p>(b) Children aged three through nine experiencing developmental delays. Child with a disability for children aged three through nine (or any subset of that age range, including ages three through five), may, subject to the conditions described in § 300.111(b), include a child--</p> <p>(1) Who is experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: Physical development, cognitive development, communication development, social or emotional development, or adaptive development; and</p> <p>(2) Who, by reason thereof, needs special education and related services.</p> <p>(c) Definitions of disability terms. The terms used in this definition of a child with a disability are defined as follows:</p> <p>(1)(i) Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.</p> <p>(ii) Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section.</p> <p>(iii) A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.</p> <p>(2) Deaf-blindness means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational needs that they cannot be accommodated in special education programs solely for children with deafness or children with blindness.</p> <p>(3) Deafness means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects a child's educational performance.</p> <p>(4)(i) Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:</p> <ul style="list-style-type: none"> <li>(A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.</li> <li>(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.</li> <li>(C) Inappropriate types of behavior or feelings under normal circumstances.</li> <li>(D) A general pervasive mood of unhappiness or depression.</li> </ul>	<p>to say that each area of suspected disability will be evaluated by a person with the appropriate expertise and licensure under Arizona law.</p>

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	<p>(E) A tendency to develop physical symptoms or fears associated with personal or school problems.</p> <p>(ii) Emotional disturbance includes schizophrenia. The term does not apply to children who are socially maladjusted, unless it is determined that they have an emotional disturbance under paragraph (c)(4)(i) of this section.</p> <p>(5) Hearing impairment means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.</p> <p>(6) Mental retardation means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period, that adversely affects a child's educational performance.</p> <p>(7) Multiple disabilities means concomitant impairments (such as mental retardation-blindness or mental retardation-orthopedic impairment), the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments. Multiple disabilities does not include deaf-blindness.</p> <p>(8) Orthopedic impairment means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by a congenital anomaly, impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contractures).</p> <p>(9) Other health impairment means having limited strength, vitality, or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that--</p> <p>(i) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficit hyperactivity disorder, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette syndrome; and</p> <p>(ii) Adversely affects a child's educational performance.</p> <p>(10) Specific learning disability--</p> <p>(i) General. Specific learning disability means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.</p> <p>(ii) Disorders not included. Specific learning disability does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.</p>	

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	<p>(11) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.</p> <p>(12) Traumatic brain injury means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. Traumatic brain injury applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. Traumatic brain injury does not apply to brain injuries that are congenital or degenerative, or to brain injuries induced by birth trauma.</p> <p>(13) Visual impairment including blindness means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.</p> <p>34 C.F.R. § 300.8</p> <p>(a) General. The SEA must establish and maintain qualifications to ensure that <b><u>personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained, including that those personnel have the content knowledge and skills to serve children with disabilities.</u></b></p> <p>(b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that--</p> <p>(1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and</p> <p>(2) Ensure that related services personnel who deliver services in their discipline or profession--</p> <p>(i) Meet the requirements of paragraph (b)(1) of this section; and</p> <p>(ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and</p> <p>(iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.</p> <p>(c) Qualifications for special education teachers. The qualifications described</p>	



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	<p>in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in section 1119(a)(2) of the ESEA.</p> <p>(d) Policy. In implementing this section, a State must adopt a policy that includes a requirement that LEAs in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.</p> <p>(e) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under this part.</p> <p>34 C.F.R. § 300.156</p> <p>(a) Notice. The public agency must provide notice to the parents of a child with a disability, in accordance with § 300.503, that describes any evaluation procedures the agency proposes to conduct.</p> <p>(b) Conduct of evaluation. In conducting the evaluation, the public agency must--</p> <p>(1) Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining--</p> <p>(i) Whether the child is a child with a disability under § 300.8; and</p> <p>(ii) The content of the child's IEP, including information related to enabling the child to be involved in and progress in the general education curriculum (or for a preschool child, to participate in appropriate activities);</p> <p>(2) Not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and</p> <p>(3) Use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.</p> <p>(c) Other evaluation procedures. Each public agency must ensure that--</p> <p>(1) Assessments and other evaluation materials used to assess a child under this part--</p> <p>(i) Are selected and administered so as not to be discriminatory on a racial or cultural basis;</p> <p>(ii) Are provided and administered in the child's native language or other</p>	

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	<p>mode of communication and in the form most likely to yield accurate information on what the child knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to so provide or administer;</p> <p>(iii) Are used for the purposes for which the assessments or measures are valid and reliable;</p> <p><b><u>(iv) Are administered by trained and knowledgeable personnel; and</u></b></p> <p>(v) Are administered in accordance with any instructions provided by the producer of the assessments.</p> <p>(2) Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.</p> <p>(3) Assessments are selected and administered so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure).</p> <p>(4) The child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;</p> <p>(5) Assessments of children with disabilities who transfer from one public agency to another public agency in the same school year are coordinated with those children's prior and subsequent schools, as necessary and as expeditiously as possible, consistent with § 300.301(d)(2) and (e), to ensure prompt completion of full evaluations.</p> <p>(6) In evaluating each child with a disability under §§ 300.304 through 300.306, the evaluation is sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified.</p> <p>(7) Assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided. 34 C.F.R. § 300.304</p>	
<p>7. The Multidisciplinary Evaluation Team shall determine, <b><u>in accordance with the IDEA and regulations</u></b>, whether the requirements of subsections (E)(6)(a) through (i) are required for a student's re-</p>	<p>(a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, <b><u>the IEP Team and other qualified professionals, as appropriate</u></b>, must--</p> <p>(1) Review existing evaluation data on the child, including--</p> <p>(i) Evaluations and information provided by the parents of the child;</p>	<p>The Arizona regulation delegates the responsibility to determine whether additional evaluations are necessary for a student's 3-year re-evaluation to the MET. As noted above, the constituents of the MET are not</p>

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evaluation.	<p>(ii) Current classroom-based, local, or State assessments, and classroom-based observations; and</p> <p>(iii) Observations by teachers and related services providers; and</p> <p>(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine--</p> <p>(i)(A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or</p> <p>(B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;</p> <p>(ii) The present levels of academic achievement and related developmental needs of the child;</p> <p>(iii)(A) Whether the child needs special education and related services; or</p> <p>(B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and</p> <p>(iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum.</p> <p>(b) Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting.</p> <p>(c) Source of data. The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section.</p> <p>(d) Requirements if additional data are not needed.</p> <p>(1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of--</p> <p>(i) That determination and the reasons for the determination; and</p> <p>(ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.</p> <p>(2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.</p> <p>(e) Evaluations before change in eligibility.</p> <p>(1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with §§ 300.304 through 300.311 before determining that the child is no longer a child with a disability.</p> <p>(2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age</p>	<p>identified in Arizona law. In the Federal regulation on review of existing data, the IEP team and the "other qualified professionals" are required to review the existing data. Since the IEP team, the other professionals, and the MET might not be identical, it would be advisable to explain the differences to avoid complaints that the group doing the review was not qualified or under inclusive.</p> <p>This regulation repeats the statement that the MET will comply with the IDEA.</p>

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	<p>eligibility for FAPE under State law.</p> <p>(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.</p> <p>34 C.F.R. § 300.305</p>	
<p><del>F. Parental Consent.</del></p> <p><del>1. A public education agency shall obtain informed written consent from the parent of the child with a disability before the initial provision of special education and related services to the child.</del></p>	<p>(b) Parental consent for services.</p> <p>(1) A public agency that is responsible for making FAPE available to a child with a disability must obtain informed consent from the parent of the child before the initial provision of special education and related services to the child.</p> <p>34 C.F.R. § 300.300</p>	This regulation is a verbatim repetition of the Federal regulation.
<p><del>2. If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public education agency may not use mediation or due process procedures in order to obtain agreement or a ruling that the services may be provided to the child.</del></p>	<p>(3) If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency--</p> <p>(i) May not use the procedures in subpart E of this part (including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;</p> <p>34 C.F.R. § 300.300</p>	This regulation is a verbatim repetition of the Federal regulation.
<p><del>3. If the parent of the child refuses to consent to the initial provision of special education and related services, or the parent fails to respond to a request to provide consent for the initial provision of special education and related services, the public education agency:</del></p> <p><del>a. Will not be considered to be in violation of the requirement to make available FAPE to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent, and</del></p> <p><del>b. Is not required to convene an IEP Team meeting or develop an IEP in accordance</del></p>	<p>(3) If the parent of a child fails to respond to a request for, or refuses to consent to, the initial provision of special education and related services, the public agency--</p> <p>(ii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with the special education and related services for which the parent refuses to or fails to provide consent; and</p> <p>(iii) Is not required to convene an IEP Team meeting or develop an IEP under §§ 300.320 and 300.324 for the child.</p> <p>34 C.F.R. § 300.300</p>	This regulation is a verbatim repetition of the Federal regulation.

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with these rules.		
<del>4. If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public education agency:</del> <del>a. May not continue to provide special education and related services to the child, but shall provide prior written notice before ceasing the provision of special education and related services;</del> <del>b. May not use the mediation procedures or the due process procedures in order to obtain agreement or a ruling that the services may be provided to the child;</del> <del>c. Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and</del> <del>d. Is not required to convene an IEP Team meeting or develop an IEP for the child for further provision of special education and related services.</del>	<p>(4) If, at any time subsequent to the initial provision of special education and related services, the parent of a child revokes consent in writing for the continued provision of special education and related services, the public agency--</p> <p>(i) May not continue to provide special education and related services to the child, but must provide prior written notice in accordance with § 300.503 before ceasing the provision of special education and related services;</p> <p>(ii) May not use the procedures in subpart E of this part (including the mediation procedures under § 300.506 or the due process procedures under §§ 300.507 through 300.516) in order to obtain agreement or a ruling that the services may be provided to the child;</p> <p>(iii) Will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further special education and related services; and</p> <p>(iv) Is not required to convene an IEP Team meeting or develop an IEP under §§ 300.320 and 300.324 for the child for further provision of special education and related services.</p> <p>34 C.F.R. § 300.300</p>	This regulation is a verbatim repetition of the Federal regulation.
<del>5. If a parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special education and related services because of the revocation of consent.</del>	<p>Consent means that--</p> <p>(a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication;</p> <p>(b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and</p> <p>(c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.</p> <p>(2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).</p> <p>(3) If the parent revokes consent in writing for their child's receipt of special education services after the child is initially provided special education and related services, the public agency is not required to amend the child's education records to remove any references to the child's receipt of special</p>	This regulation is a verbatim repetition of the Federal regulation.

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	education and related services because of the revocation of consent. 34 C.F.R. § 300.9	
G. Individualized Education Program (IEP). 1. Each public education agency shall establish, implement, and disseminate to its school-based personnel, and make available to parents, written procedures for the development, implementation, review, and revision of IEPs.	<p>A State is eligible for assistance under Part B of the Act for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets the conditions in §§ 300.101 through 300.176.</p> <p>34 C.F.R. § 300.100</p> <p>The LEA, in providing for the education of children with disabilities within its jurisdiction, must have in effect policies, procedures, and programs that are consistent with the State policies and procedures established under §§ 300.101 through 300.163, and §§ 300.165 through 300.174.</p> <p>34 C.F.R. § 300.201</p> <p>The LEA must ensure that all personnel necessary to carry out Part B of the Act are appropriately and adequately prepared, subject to the requirements of § 300.156 (related to personnel qualifications) and section 2122 of the ESEA.</p> <p>34 C.F.R. § 300.207</p> <p>The LEA must make available to parents of children with disabilities and to the general public all documents relating to the eligibility of the agency under Part B of the Act.</p> <p>34 C.F.R. § 300.212</p>	The policies related to IEPs, like all other policies related to the Special Education program and plan, must be up to date, in writing, and provided to staff, parents of children with disabilities, and the general public. Those obligations already exist under Federal law as conditions of receiving Part B funds.
<del>2. Procedures for IEPs shall meet the requirements of the IDEA and regulations, and state statutes and State Board of Education rules.</del>	There is no Federal rule that requires such a state regulation.	This is redundant and unnecessary.
3. Procedures shall include the incorporation of <u>Arizona Academic Standards</u> into the development of each IEP. IEP goals aligned with the Arizona Academic Standards shall identify the specific level within the	<p>(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 300.320 through 300.324, and that must include--</p> <p>(1) A statement of the child's present levels of academic achievement and</p>	The Federal regulation requires an IEP that explains how the unique instruction and services provided to a disabled child will allow the child to participate in and benefit from the "general education curriculum" of

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Standard that is being addressed.	<p>functional performance, including--</p> <p>(i) How the child's disability affects the child's involvement and progress in the <b><u>general education curriculum (i.e., the same curriculum as for nondisabled children)</u></b>; or</p> <p>(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;</p> <p>(2)(i) A statement of measurable annual goals, including academic and functional goals designed to--</p> <p>(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and</p> <p>(B) Meet each of the child's other educational needs that result from the child's disability;</p> <p>(ii) For children with disabilities who take alternate assessments aligned to alternate academic achievement standards, a description of benchmarks or short-term objectives;</p> <p>(3) A description of--</p> <p>(i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and</p> <p>(ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;</p> <p>(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child--</p> <p>(i) To advance appropriately toward attaining the annual goals;</p> <p>(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and</p> <p>(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;</p> <p>(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;</p> <p>(6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and</p> <p>(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of</p>	<p>the State. If the Arizona Academic Standards are those State curriculum standards, then that reference is appropriate. If the Standards are amended from time to time, it would be appropriate to reference the most recent publication of those standards and any other provision of Arizona law that requires the adoption and periodic revision of such standards.</p> <p>It might be worthwhile to include in this regulation a reminder that any instructional methods and materials or assistive technology provided pursuant to an IEP should be reviewed to assure what is being actually used is aligned to the most current state curriculum standards to the extent such new resources are available.</p>

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	<p>student achievement, a statement of why--</p> <p>(A) The child cannot participate in the regular assessment; and</p> <p>(B) The particular alternate assessment selected is appropriate for the child; and</p> <p>(7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.</p> <p>34 C.F.R. § 300.320</p>	
<p>4. Each IEP of a student with a disability shall stipulate the provision of instructional or support services by a special education teacher, certified speech-language therapist, and/or ancillary service provider(s), as appropriate.</p>	<p>(a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 300.320 through 300.324, and that must include--</p> <p>(1) A statement of the child's present levels of academic achievement and functional performance, including--</p> <p>(i) How the child's disability affects the child's involvement and progress in the general education curriculum (i.e., the same curriculum as for nondisabled children); or</p> <p>(ii) For preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;</p> <p>(2)(i) A statement of measurable annual goals, including academic and functional goals designed to--</p> <p>(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and</p> <p>(B) Meet each of the child's other educational needs that result from the child's disability;</p> <p>(ii) For children with disabilities who take alternate assessments aligned to alternate academic achievement standards, a description of benchmarks or short-term objectives;</p> <p>(3) A description of--</p> <p>(i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and</p> <p>(ii) When periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;</p> <p><u>(4) A statement of the special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child,</u> or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided to enable the child--</p>	<p>This Arizona regulation includes a list of particular kinds of service providers that <b>could</b> be part of an IEP. However, the list suggests that either those are the only service providers that must be included or that every IEP must include at least those providers.</p> <p>The Federal regulations do not prescribe what providers must be part of the placement. The IEP is supposed to be designed to meet unique needs of each eligible student with specific goals tailored to that student. Once that is established, then the IEP team must determine what configuration of special education and related service providers are necessary and how they will be provided in the least restrictive environment.</p> <p>Any state law or guidelines for writing IEPs that looks like the type of service or service provider has been pre-determined is possibly a procedural denial of FAPE. That is, the ultimate authority to define FAPE must reside with the IEP Team. In addition, such a list in a state regulation may unduly restrict PEA discretion.</p>



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	<p>(i) To advance appropriately toward attaining the annual goals;</p> <p>(ii) To be involved in and make progress in the general education curriculum in accordance with paragraph (a)(1) of this section, and to participate in extracurricular and other nonacademic activities; and</p> <p>(iii) To be educated and participate with other children with disabilities and nondisabled children in the activities described in this section;</p> <p>(5) An explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in paragraph (a)(4) of this section;</p> <p>(6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and</p> <p>(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why--</p> <p>(A) The child cannot participate in the regular assessment; and</p> <p>(B) The particular alternate assessment selected is appropriate for the child; and</p> <p>(7) The projected date for the beginning of the services and modifications described in paragraph (a)(4) of this section, and the anticipated frequency, location, and duration of those services and modifications.</p> <p>(b) Transition services. Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, and updated annually, thereafter, the IEP must include--</p> <p>(1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and</p> <p>(2) The transition services (including courses of study) needed to assist the child in reaching those goals.</p> <p>(c) Transfer of rights at age of majority. Beginning not later than one year before the child reaches the age of majority under State law, the IEP must include a statement that the child has been informed of the child's rights under Part B of the Act, if any, that will transfer to the child on reaching the age of majority under § 300.520.</p> <p>(d) Construction. Nothing in this section shall be construed to require--</p> <p>(1) That additional information be included in a child's IEP beyond what is explicitly required in section 614 of the Act; or</p> <p>(2) The IEP Team to include information under one component of a child's IEP that is already contained under another component of the child's IEP.</p> <p>34 C.F.R. § 300.320</p>	

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	<p>(a) Development of IEP--</p> <p>(1) General. In developing each child's IEP, the IEP Team must consider--</p> <p>(i) The strengths of the child;</p> <p>(ii) The concerns of the parents for enhancing the education of their child;</p> <p>(iii) The results of the initial or most recent evaluation of the child; and</p> <p>(iv) The academic, developmental, and functional needs of the child.</p> <p>(2) Consideration of special factors. The IEP Team must--</p> <p>(i) In the case of a child whose behavior impedes the child's learning or that of others, consider the use of positive behavioral interventions and supports, and other strategies, to address that behavior;</p> <p>(ii) In the case of a child with limited English proficiency, consider the language needs of the child as those needs relate to the child's IEP;</p> <p>(iii) In the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team determines, after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;</p> <p>(iv) Consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional personnel in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and</p> <p>(v) Consider whether the child needs assistive technology devices and services.</p> <p>(3) Requirement with respect to regular education teacher. A regular education teacher of a child with a disability, as a member of the IEP Team, must, to the extent appropriate, participate in the development of the IEP of the child, including the determination of--</p> <p>(i) Appropriate positive behavioral interventions and supports and other strategies for the child; and</p> <p>(ii) Supplementary aids and services, program modifications, and support for school personnel consistent with § 300.320(a)(4).</p> <p>34 C.F.R. § 300.324</p>	
<p>5. Each student with a disability who has an IEP shall participate in the state assessment system. Students with disabilities can test with or without <b>standard accommodations</b></p>	<p>(3) A description of--</p> <p>(i) How the child's progress toward meeting the annual goals described in paragraph (2) of this section will be measured; and</p> <p>(ii) When periodic reports on the progress the child is making toward meeting</p>	<p>The Arizona regulation starts with a restatement of the general principle that children with disabilities need to participate in the state assessment system. Any manner</p>

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<p>as indicated in the student's IEP. Students who are determined to have a <b><u>significant cognitive disability</u></b> based on the established eligibility criteria will be assessed with the state's <b><u>alternate assessment</u></b> as determined by the IEP team.</p>	<p>the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;</p> <p>(6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the Act; and</p> <p>(ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why--</p> <p>(A) The child cannot participate in the regular assessment; and</p> <p>(B) The particular alternate assessment selected is appropriate for the child;</p> <p>34 C.F.R. § 300.320</p>	<p>of participation for a disabled student that is different than the manner in which a non-disabled student participates must be identified and explained in the IEP. That principle is related to the "least restrictive environment" requirement for placement and the goal of allowing participation by disabled students in the general curriculum. It also assumes that any statewide system of accountability and improvement will include valid information about how PEAs are serving children with disabilities.</p> <p>This regulation contains several terms that need further specificity in order to provide useful guidance. That is, although "accommodations" are defined above in B.1, there is no explanation of what a "standard accommodation" might be. It suggests that some accommodations are "non-standard," but does not indicate what difference that makes.</p> <p>The regulation also refers to "significant cognitive disability" without indicating how one determines what a cognitive disability is or when one becomes significant. The rule further states that such determinations will be based on "established eligibility criteria," but does not say what the criteria are, who establishes them, or where one could locate them.</p> <p>Finally, there are references to an "alternative assessment" that could be made more clear in terms of the state statutory authority to create such an assessment and which particular state-created alternative assessment will satisfy this requirement.</p>

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<p>6. <b>A meeting</b> shall be conducted to review and revise each student's IEP <b>at least</b> annually, or more frequently if the student's progress substantially deviates from what was anticipated. The public education agency shall provide written <b>notice</b> of the meeting to the parents of the student to ensure that parents have the opportunity to participate in the meeting.</p>	<p>(a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311</p> <p>(1) If the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or</p> <p>(2) If the child's parent or teacher requests a reevaluation.</p> <p>(b) Limitation. A reevaluation conducted under paragraph (a) of this section--</p> <p>(1) May occur <b>not more than</b> once a year, unless the parent and the public agency agree otherwise; and</p> <p>(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.</p> <p>34 C.F.R. § 300.303</p> <p>(4) Agreement.</p> <p>(i) In making changes to a child's IEP after the annual IEP Team meeting for a school year, <b>the parent of a child with a disability and the public agency may agree not to convene an IEP Team meeting</b> for the purposes of making those changes, and instead may develop a written document to amend or modify the child's current IEP.</p> <p>(ii) If changes are made to the child's IEP in accordance with paragraph (a)(4)(i) of this section, the public agency must ensure that the child's IEP Team is informed of those changes.</p> <p>(5) Consolidation of IEP Team meetings. To the extent possible, the public agency must encourage the consolidation of reevaluation meetings for the child and other IEP Team meetings for the child.</p> <p>(6) Amendments. Changes to the IEP may be made either by the entire IEP Team at an IEP Team meeting, or as provided in paragraph (a)(4) of this section, by amending the IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with a revised copy of the IEP with the amendments incorporated.</p> <p>(b) Review and revision of IEPs--</p> <p>(1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, the IEP Team--</p> <p>(i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and</p> <p>(ii) Revises the IEP, as appropriate, to address--</p> <p>(A) Any lack of expected progress toward the annual goals described in § 300.320(a)(2), and in the general education curriculum, if appropriate;</p> <p>(B) The results of any reevaluation conducted under § 300.303;</p> <p>(C) Information about the child provided to, or by, the parents, as described under § 300.305(a)(2);</p>	<p>This state regulation deviates from Federal law in several regards.</p> <p>First, it says that a meeting shall be held "at least" annually; however, it is not clear if that means a meeting of the full IEP team. The Federal rule requires review of the IEP by the IEP team "not less than" annually unless there is mutual agreement between the PEA and the parent to change the IEP without convening the whole IEP team. In addition, the Federal rules allow for reevaluation by the IEP team and "other qualified professionals" based on "existing data." Such review may result in changes to the IEP <b>without a meeting</b> of the IEP team. The State rule is more restrictive than the Federal rule, since it seems to require an annual review at an IEP team meeting in all cases.</p> <p>Second, the Federal rule says to reevaluate when the need for improvement "warrants" reevaluation. The Arizona regulation says reevaluation is required if the student's progress "substantially deviates" from what was anticipated in the IEP. The regulation should state the criteria that demonstrate what a deviation is and how one knows when it is substantial. The term suggests an objective standard. The question in all such measurement-related rules is whether you promote uniform methods and consistent results by explicitly stating the method of measurement, or, leave it open to local discretion to interpret in possibly divergent ways.</p> <p>The parent notice provision is required by Federal law, however, the state rule only requires notice of the meeting and does not explain what information must be provided in such notice to make parental participation</p>

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	<p>(D) The child's anticipated needs; or (E) Other matters</p> <p>34 C.F.R. § 300.324</p> <p>(a) Review of existing evaluation data. As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must-- (1) Review existing evaluation data on the child, including-- (i) Evaluations and information provided by the parents of the child; (ii) Current classroom-based, local, or State assessments, and classroom-based observations; and (iii) Observations by teachers and related services providers; and (2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine-- (i)(A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child; or (B) In case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child; (ii) The present levels of academic achievement and related developmental needs of the child; (iii)(A) Whether the child needs special education and related services; or (B) In the case of a reevaluation of a child, whether the child continues to need special education and related services; and (iv) Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general education curriculum. (b) <b><u>Conduct of review. The group described in paragraph (a) of this section may conduct its review without a meeting.</u></b> (c) Source of data. The public agency must administer such assessments and other evaluation measures as may be needed to produce the data identified under paragraph (a) of this section. (d) Requirements if additional data are not needed. (1) If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, and to determine the child's educational needs, the public agency must notify the child's parents of-- (i) That determination and the reasons for the determination; and (ii) The right of the parents to request an assessment to determine whether the child continues to be a child with a disability, and to determine the child's educational needs.</p>	<p>meaningful.</p>

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	<p>(2) The public agency is not required to conduct the assessment described in paragraph (d)(1)(ii) of this section unless requested to do so by the child's parents.</p> <p>(e) Evaluations before change in eligibility.</p> <p>(1) Except as provided in paragraph (e)(2) of this section, a public agency must evaluate a child with a disability in accordance with §§ 300.304 through 300.311 before determining that the child is no longer a child with a disability.</p> <p>(2) The evaluation described in paragraph (e)(1) of this section is not required before the termination of a child's eligibility under this part due to graduation from secondary school with a regular diploma, or due to exceeding the age eligibility for FAPE under State law.</p> <p>(3) For a child whose eligibility terminates under circumstances described in paragraph (e)(2) of this section, a public agency must provide the child with a summary of the child's academic achievement and functional performance, which shall include recommendations on how to assist the child in meeting the child's postsecondary goals.</p> <p>34 C.F.R. § 300.305</p> <p>(a) Public agency responsibility--general. Each public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate, including--</p> <p>(1) <b><u>Notifying parents of the meeting early enough to ensure that they will have an opportunity to attend;</u></b> and</p> <p>(2) Scheduling the meeting at a mutually agreed on time and place.</p> <p>(b) Information provided to parents.</p> <p>(1) The notice required under paragraph (a)(1) of this section must--</p> <p>(i) Indicate the purpose, time, and location of the meeting and who will be in attendance; and</p> <p>(ii) Inform the parents of the provisions in § 300.321(a)(6) and (c) (relating to the participation of other individuals on the IEP Team who have knowledge or special expertise about the child), and § 300.321(f) (relating to the participation of the Part C service coordinator or other representatives of the Part C system at the initial IEP Team meeting for a child previously served under Part C of the Act).</p> <p>(2) For a child with a disability beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP Team, the notice also must--</p> <p>(i) Indicate--</p> <p>(A) That a purpose of the meeting will be the consideration of the postsecondary goals and transition services for the child, in accordance with §</p>	

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	<p>300.320(b); and            (B) That the agency will invite the student; and            (ii) Identify any other agency that will be invited to send a representative.            (c) Other methods to ensure parent participation. If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls, consistent with § 300.328 (related to alternative means of meeting participation).            (d) Conducting an IEP Team meeting without a parent in attendance. A meeting may be conducted without a parent in attendance if the public agency is unable to convince the parents that they should attend. In this case, the public agency must keep a record of its attempts to arrange a mutually agreed on time and place, such as--            (1) Detailed records of telephone calls made or attempted and the results of those calls;            (2) Copies of correspondence sent to the parents and any responses received; and            (3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.            (e) Use of interpreters or other action, as appropriate. The public agency must take whatever action is necessary to ensure that the parent understands the proceedings of the IEP Team meeting, including arranging for an interpreter for parents with deafness or whose native language is other than English.            (f) Parent copy of child's IEP. The public agency must give the parent a copy of the child's IEP at no cost to the parent.</p> <p>34 C.F.R. § 300.322</p> <p>(a) Notice. <b><u>Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency--</u></b>  <b><u>(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child;</u></b>            or            (2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.            (b) Content of notice. The notice required under paragraph (a) of this section must include--            (1) A description of the action proposed or refused by the agency;            (2) An explanation of why the agency proposes or refuses to take the action;            (3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;</p>	

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	<p>(4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;</p> <p>(5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;</p> <p>(6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and</p> <p>(7) A description of other factors that are relevant to the agency's proposal or refusal.</p> <p>(c) Notice in understandable language.</p> <p>(1) The notice required under paragraph (a) of this section must be--</p> <p>(i) Written in language understandable to the general public; and</p> <p>(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.</p> <p>(2) If the native language or other mode of communication of the parent is not a written language, the public agency must take steps to ensure--</p> <p>(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;</p> <p>(ii) That the parent understands the content of the notice; and</p> <p>(iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.</p> <p>34 C.F.R. § 300.503</p>	
<p>7. A parent or public education agency may request in writing a <b>review of the IEP</b>. Such review shall take place within 15 school days of the receipt of the request or at a mutually agreed upon time but not to exceed 30 school days.</p>	<p>(a) General. A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with §§ 300.304 through 300.311</p> <p>(1) If the public agency determines that the educational or related service needs, including improved academic achievement and functional performance, of the child warrant a reevaluation; or</p> <p>(2) <b><u>If the child's parent or teacher requests a reevaluation.</u></b></p> <p>(b) Limitation. A reevaluation conducted under paragraph (a) of this section--</p> <p>(1) May occur <b><u>not more than</u></b> once a year, unless the parent and the public agency agree otherwise; and</p> <p>(2) Must occur at least once every 3 years, unless the parent and the public agency agree that a reevaluation is unnecessary.</p> <p>34 C.F.R. § 300.303</p> <p>(b) Review and revision of IEPs--</p> <p>(1) General. Each public agency must ensure that, subject to paragraphs (b)(2) and (b)(3) of this section, <b>the IEP Team--</b></p>	<p>The Federal regulations expressly state that a parent or the child's teacher may request <b><u>reevaluation</u></b>. However, there does not appear to be a parallel regulation that says a parent may request a review of the IEP more frequently than annually. The Federal rule can reasonably be read to say that any member of the IEP team could request review but that the whole team would have to decide whether to conduct a review. The Federal rule also does not state that review of an IEP must take place within a certain period of time after a request.</p> <p>This state regulation appears to give parents more rights, subject to more specific time limits, than is required by Federal law.</p>



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	<p>(i) Reviews the child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved; and</p> <p>(ii) <b>Revises the IEP, as appropriate</b>, to address--</p> <p>(A) Any lack of expected progress toward the annual goals described in § 300.320(a)(2), and in the general education curriculum, if appropriate;</p> <p>(B) The results of any reevaluation conducted under § 300.303;</p> <p>(C) Information about the child provided to, or by, the parents, as described under § 300.305(a)(2);</p> <p>(D) The child's anticipated needs; or</p> <p>(E) Other matters</p> <p>34 C.F.R. § 300.324</p>	
<p>H. Least Restrictive Environment.</p> <p>1. Each public education agency shall establish, implement, and disseminate to its school-based personnel, and make available to parents, <b>written procedures</b> to ensure the delivery of special education services in the least restrictive environment as identified by IDEA and regulations, and state statutes and State Board of Education rules.</p> <p>2. A <b>continuum of services</b> and supports for students with disabilities shall be available through each public education agency.</p>	<p>(a) General.</p> <p>(1) Except as provided in § 300.324(d)(2) (regarding children with disabilities in adult prisons), the State must have in effect policies and procedures to ensure that public agencies in the State meet the LRE requirements of this section and §§ 300.115 through 300.120.</p> <p>(2) Each public agency must ensure that--</p> <p>(i) To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled; and</p> <p>(ii) Special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.</p> <p>(b) Additional requirement--State funding mechanism--</p> <p>(1) General.</p> <p>(i) A State funding mechanism must not result in placements that violate the requirements of paragraph (a) of this section; and</p> <p>(ii) A State must not use a funding mechanism by which the State distributes funds on the basis of the type of setting in which a child is served that will result in the failure to provide a child with a disability FAPE according to the unique needs of the child, as described in the child's IEP.</p> <p>(2) Assurance. If the State does not have policies and procedures to ensure compliance with paragraph (b)(1) of this section, the State must provide the Secretary an assurance that the State will revise the funding mechanism as soon as feasible to ensure that the mechanism does not result in placements that violate that paragraph.</p> <p>34 C.F.R. § 300.114</p>	<p>This rule simply refers to the IDEA rules on LRE and refers to a "continuum of services and supports" without any explanation of what that includes or means.</p>

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	<p>(a) General.</p> <p>(1) Special education means specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, including--</p> <p>(i) Instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and</p> <p>(ii) Instruction in physical education.</p> <p>(2) Special education includes each of the following, if the services otherwise meet the requirements of paragraph (a)(1) of this section--</p> <p>(i) Speech-language pathology services, or any other related service, if the service is considered special education rather than a related service under State standards;</p> <p>(ii) Travel training; and</p> <p>(iii) Vocational education.</p> <p>(b) Individual special education terms defined. The terms in this definition are defined as follows:</p> <p>(1) At no cost means that all specially-designed instruction is provided without charge, but does not preclude incidental fees that are normally charged to nondisabled students or their parents as a part of the regular education program.</p> <p>(2) Physical education means--</p> <p>(i) The development of--</p> <p>(A) Physical and motor fitness;</p> <p>(B) Fundamental motor skills and patterns; and</p> <p>(C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports); and</p> <p>(ii) Includes special physical education, adapted physical education, movement education, and motor development.</p> <p>(3) Specially designed instruction means adapting, as appropriate to the needs of an eligible child under this part, the content, methodology, or delivery of instruction--</p> <p>(i) To address the unique needs of the child that result from the child's disability; and</p> <p>(ii) To ensure access of the child to the general curriculum, so that the child can meet the educational standards within the jurisdiction of the public agency that apply to all children.</p> <p>(4) Travel training means providing instruction, as appropriate, to children with significant cognitive disabilities, and any other children with disabilities who require this instruction, to enable them to--</p> <p>(i) Develop an awareness of the environment in which they live; and</p> <p>(ii) Learn the skills necessary to move effectively and safely from place to place within that environment (e.g., in school, in the home, at work, and in the community).</p>	

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	<p>(5) Vocational education means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career not requiring a baccalaureate or advanced degree.</p> <p>34 C.F.R. § 300.39</p>	
<p>I. Procedural Safeguards.</p> <p>1. Each public education agency shall establish, implement, and disseminate to its school-based personnel and parents of students with disabilities <u>written procedures</u> to ensure children with disabilities and their parents are afforded the <u>procedural safeguards</u> required by federal statute and regulation and state statute. These procedures shall include dissemination to parents information about the public education agency's and state's <u>dispute resolution</u> options.</p>	<p>Each SEA must ensure that each public agency establishes, maintains, and implements procedural safeguards that meet the requirements of §§ 300.500 through 300.536.</p> <p>34 C.F.R. § 300.500</p> <p>(a) General. A copy of the procedural safeguards available to the parents of a child with a disability must be given to the parents only one time a school year, except that a copy also must be given to the parents--</p> <p>(1) Upon initial referral or parent request for evaluation;</p> <p>(2) Upon receipt of the first State complaint under §§ 300.151 through 300.153 and upon receipt of the first due process complaint under § 300.507 in a school year;</p> <p>(3) In accordance with the discipline procedures in § 300.530(h); and</p> <p>(4) Upon request by a parent.</p> <p>(b) Internet Web site. A public agency may place a current copy of the procedural safeguards notice on its Internet Web site if a Web site exists.</p> <p>(c) Contents. The procedural safeguards notice must include a full explanation of all of the procedural safeguards available under § 300.148, §§ 300.151 through 300.153, § 300.300, §§ 300.502 through 300.503, §§ 300.505 through 300.518, §§ 300.530 through 300.536 and §§ 300.610 through 300.625 relating to--</p> <p>(1) Independent educational evaluations;</p> <p>(2) Prior written notice;</p> <p>(3) Parental consent;</p> <p>(4) Access to education records;</p> <p>(5) Opportunity to present and resolve complaints through the due process complaint and State complaint procedures, including--</p> <p>(i) The time period in which to file a complaint;</p> <p>(ii) The opportunity for the agency to resolve the complaint; and</p> <p>(iii) The difference between the due process complaint and the State complaint procedures, including the jurisdiction of each procedure, what issues may be raised, filing and decisional timelines, and relevant procedures;</p> <p>(6) The availability of mediation;</p> <p>(7) The child's placement during the pendency of any due process complaint;</p> <p>(8) Procedures for students who are subject to placement in an interim</p>	<p>This regulation generally states the duty of PEAs to have a policy on procedural safeguards for parents and to disseminate the policy to staff and parents, including dispute resolution. The regulation is unnecessary because it contains much less detail than the Federal rule in terms of the content or frequency of the notice.</p>

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	<p>alternative educational setting;</p> <p>(9) Requirements for unilateral placement by parents of children in private schools at public expense;</p> <p>(10) Hearings on due process complaints, including requirements for disclosure of evaluation results and recommendations;</p> <p>(11) State-level appeals (if applicable in the State);</p> <p>(12) Civil actions, including the time period in which to file those actions; and</p> <p>(13) Attorneys' fees.</p> <p>(d) Notice in understandable language. The notice required under paragraph (a) of this section must meet the requirements of § 300.503(c).</p> <p>34 C.F.R. § 300.504</p>	
<p><del>2. In accordance with the prior written notice requirements of IDEA, prior written notice must be issued in a timely manner following a decision by a PEA to propose to initiate or change, or refuse to initiate or change, the identification, evaluation, educational placement or the provision of FAPE to the child.</del></p>	<p>(a) Notice. Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency--</p> <p>(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or</p> <p>(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.</p> <p>(b) Content of notice. The notice required under paragraph (a) of this section must include--</p> <p>(1) A description of the action proposed or refused by the agency;</p> <p>(2) An explanation of why the agency proposes or refuses to take the action;</p> <p>(3) A description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed or refused action;</p> <p>(4) A statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained;</p> <p>(5) Sources for parents to contact to obtain assistance in understanding the provisions of this part;</p> <p>(6) A description of other options that the IEP Team considered and the reasons why those options were rejected; and</p> <p>(7) A description of other factors that are relevant to the agency's proposal or refusal.</p> <p>(c) Notice in understandable language.</p> <p>(1) The notice required under paragraph (a) of this section must be--</p> <p>(i) Written in language understandable to the general public; and</p> <p>(ii) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.</p> <p>(2) If the native language or other mode of communication of the parent is not</p>	<p>The Arizona regulation is a verbatim repetition of the Federal regulation.</p>

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	<p>a written language, the public agency must take steps to ensure--</p> <p>(i) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;</p> <p>(ii) That the parent understands the content of the notice; and</p> <p>(iii) That there is written evidence that the requirements in paragraphs (c)(2)(i) and (ii) of this section have been met.</p> <p>34 C.F.R. § 300.503</p>	
<p>J. Confidentiality.</p> <p>1. Each public education agency shall establish, implement, and disseminate to its personnel, and make available to parents, written policies and procedures to ensure the <b>confidentiality of records and information</b> in accordance with the IDEA, the Family Educational Rights and Privacy Act (FERPA) and regulations, and state statutes.</p>	<p>The State must have policies and procedures in effect to ensure that public agencies in the State comply with §§ 300.610 through 300.626 related to protecting the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the Act.</p> <p>34 C.F.R. § 300.123</p> <p>The Secretary takes appropriate action, in accordance with section 444 of GEPA, to ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, and consistent with §§ 300.611 through 300.627.</p> <p>34 C.F.R. § 300.610</p>	<p>This state regulation incorporates several Federal laws by reference related to protection of student records. As with most other such regulations that require a PEA to adopt and implement a policy, it requires dissemination to PEA staff and also to parents of children with disabilities.</p>
<p><del>2. Parents shall be fully informed about the requirements of the IDEA and regulations, including an annual notice of the policies and procedures that the PEA must follow regarding storage, disclosure to a third party, retention, and destruction of personally identifiable information.</del></p>	<p>(a) The SEA must give notice that is adequate to fully inform parents about the requirements of § 300.123, including--</p> <p>(1) A description of the extent that the notice is given in the native languages of the various population groups in the State;</p> <p>(2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;</p> <p>(3) A summary of the policies and procedures that participating agencies must follow regarding <b>storage, disclosure to third parties, retention, and destruction of personally identifiable information; and</b></p> <p>(4) A description of all of the rights of parents and children regarding this information, including the rights under FERPA and implementing regulations in 34 CFR part 99.</p> <p>(b) Before any major identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation adequate to notify parents throughout the State of the activity.</p> <p>34 C.F.R. § 300.612</p>	<p>This regulation repeats part of the Federal law regarding parental notice.</p>

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<p>3. The rights of parents regarding education records are transferred to the student at age 18, unless the student has been declared legally incompetent, or the student has executed a delegation of rights to make educational decisions pursuant to A.R.S. § 15-773.</p>	<p>(a) General. A State may provide that, when a child with a disability reaches the age of majority under State law that applies to all children (except for a child with a disability who has been determined to be incompetent under State law)--</p> <p>(1)(i) The public agency must provide any notice required by this part to both the child and the parents; and</p> <p>(ii) All rights accorded to parents under Part B of the Act transfer to the child;</p> <p>(2) All rights accorded to parents under Part B of the Act transfer to children who are incarcerated in an adult or juvenile, State or local correctional institution; and</p> <p>(3) Whenever a State provides for the transfer of rights under this part pursuant to paragraph (a)(1) or (a)(2) of this section, the agency must notify the child and the parents of the transfer of rights.</p> <p>(b) Special rule. A State must establish procedures for appointing the parent of a child with a disability, or, if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of the child's eligibility under Part B of the Act if, under State law, a child who has reached the age of majority, but has not been determined to be incompetent, can be determined not to have the ability to provide informed consent with respect to the child's educational program.</p> <p>34 C.F.R. § 300.520</p> <p>(a) The SEA must have in effect policies and procedures regarding the extent to which children are afforded rights of privacy similar to those afforded to parents, taking into consideration the age of the child and type or severity of disability.</p> <p>(b) Under the regulations for FERPA in 34 CFR 99.5(a), the rights of parents regarding education records are transferred to the student at age 18.</p> <p>(c) If the rights accorded to parents under Part B of the Act are transferred to a student who reaches the age of majority, consistent with § 300.520, the rights regarding educational records in §§ 300.613 through 300.624 must also be transferred to the student. However, the public agency must provide any notice required under section 615 of the Act to the student and the parents.</p> <p>34 C.F.R. § 300.625</p>	<p>This regulation repeats Federal law except to the extent that it cross references an Arizona statute regarding "delegation of rights" by an adult child to a parent.</p>
<p>4. Upon receiving a written request, each public education agency shall forward special education records to any other public education agency in which a student is attempting to enroll. Records shall be</p>	<p>(e) IEPs for children who transfer public agencies in the same State. If a child with a disability (who had an IEP that was in effect in a previous public agency in the same State) transfers to a new public agency in the same State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide FAPE to the child</p>	<p>Under the Arizona regulation, the obligation to transfer student records is on the sending PEA. Under Federal law, the obligation is on the receiving LEA to obtain the records from the sending agency and that agency must</p>

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<p>forwarded <b><u>within the time-frame specified in A.R.S. § 15-828(F)</u></b>. The public education agency shall also forward records to any other person or agency for which the parents have given signed consent.</p> <p><b><u>G. Within five school days after enrolling</u></b> a transfer pupil from a private school or another school district, a school shall request directly from the pupil's previous school a certified copy of the pupil's record. The requesting school shall exercise due diligence in obtaining the copy of the record requested. Notwithstanding any financial debt owed by the pupil, any school requested to forward a copy of a transferring pupil's record to the new school shall comply and forward the record within ten school days after receipt of the request unless the record has been flagged pursuant to § 15-829. If the record has been flagged, the requested school shall not forward the copy and shall notify the local law enforcement agency of the request. School districts shall include in the educational records required by this subsection data collected pursuant to §§ 15-741 and 15-766, as prescribed by the state board of education.</p> <p>Ariz. Rev. Stat. Ann. § 15-828</p>	<p>(including services comparable to those described in the child's IEP from the previous public agency), until the new public agency either--</p> <p>(1) Adopts the child's IEP from the previous public agency; or</p> <p>(2) Develops, adopts, and implements a new IEP that meets the applicable requirements in §§ 300.320 through 300.324.</p> <p>(f) IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency), until the new public agency--</p> <p>(1) Conducts an evaluation pursuant to §§ 300.304 through 300.306 (if determined to be necessary by the new public agency); and</p> <p>(2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in §§ 300.320 through 300.324.</p> <p>(g) Transmittal of records. To facilitate the transition for a child described in paragraphs (e) and (f) of this section--</p> <p>(1) <b><u>The new public agency in which the child enrolls must take reasonable steps to promptly obtain the child's records</u></b>, including the IEP and supporting documents and any other records relating to the provision of special education or related services to the child, from the previous public agency in which the child was enrolled, pursuant to 34 CFR 99.31(a)(2); and</p> <p>(2) The previous public agency in which the child was enrolled must take <b><u>reasonable steps to promptly respond to the request</u></b> from the new public agency.</p> <p>34 C.F.R. § 300.323</p> <p>(a)<sup>1</sup> Parental consent must be obtained before personally identifiable information is disclosed to parties, other than officials of participating agencies in accordance with paragraph (b)(1) of this section, unless the information is contained in education records, and the disclosure is authorized without parental consent under 34 CFR part 99. (b)(1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, parental consent is not required before personally identifiable information is released to officials of participating agencies for purposes of meeting a requirement of this part.</p> <p>(2) Parental consent, or the consent of an eligible child who has reached the age of majority under State law, must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services in accordance with § 300.321(b)(3).</p>	<p>promptly respond. Under Arizona statute, A.R.S. sec. 15-828(G), the receiving school must request student information within 5 days of enrollment of a new student.</p> <p>Since the Arizona rule states a fixed number of days, it is more restrictive than the Federal rule which only requires a reasonably prompt request and response.</p> <p>The rule also requires the PEA to forward records to any "other person or agency" for which there is parental consent in writing. That is consistent with Federal law, however, there are some agencies and persons to which parental consent is not necessary under Federal law because they have some identified need to know. This regulation is somewhat ambiguous as to those types of disclosures.</p>

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	<p>(3) If a child is enrolled, or is going to enroll in a private school that is not located in the LEA of the parent's residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence.</p> <p>34 C.F.R. § 300.622</p>	
<p>K. Preschool Programs. Each public education agency responsible for serving preschool children with disabilities shall establish, implement, and disseminate to its personnel, and make available to parents, written procedures for:</p> <p>1. The operation of the preschool program in accordance with federal statute and regulation, and state statute;</p>	<p>The purpose of this part is to provide financial assistance to States to--</p> <p>(a) Develop and implement a statewide, comprehensive, coordinated, multidisciplinary, interagency system that provides early intervention services for infants and toddlers with disabilities and their families;</p> <p>(b) Facilitate the coordination of payment for early intervention services from Federal, State, local, and private sources (including public and private insurance coverage);</p> <p>(c) Enhance State capacity to provide quality early intervention services and expand and improve existing early intervention services being provided to infants and toddlers with disabilities and their families;</p> <p>(d) Enhance the capacity of State and local agencies and service providers to identify, evaluate, and meet the needs of all children, including historically underrepresented populations, particularly minority, low-income, inner-city, and rural children, and infants and toddlers in foster care; and</p> <p>(e) Encourage States to expand opportunities for children under three years of age who would be at risk of having substantial developmental delay if they did not receive early intervention services.</p> <p>34 C.F.R. § 303.1</p> <p>Each application must contain--</p> <p>(a) The specific State application requirements (including certifications, descriptions, methods, and policies and procedures) required in §§ 303.201 through 303.212; and</p> <p>(b) The assurances required in §§ 303.221 through 303.227.</p> <p>34 C.F.R. § 303.200</p> <p>Each system must include a single line of responsibility in a lead agency designated or established by the Governor that is responsible for the following:</p> <p>(a)(1) The general administration and supervision of programs and activities administered by agencies, institutions, organizations, and EIS providers receiving assistance under part C of the Act.</p>	<p>This regulation incorporates the requirements of Part C which funds pre-school programs.</p>



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	<p>(2) The monitoring of programs and activities used by the State to carry out part C of the Act (whether or not the programs or activities are administered by agencies, institutions, organizations, and EIS providers that are receiving assistance under part C of the Act), to ensure that the State complies with part C of the Act, including--</p> <p>(i) Monitoring agencies, institutions, organizations, and EIS providers used by the State to carry out part C of the Act;</p> <p>(ii) Enforcing any obligations imposed on those agencies, institutions, organizations, and EIS providers under part C of the Act and these regulations;</p> <p>(iii) Providing technical assistance, if necessary, to those agencies, institutions, organizations, and EIS providers;</p> <p>(iv) Correcting any noncompliance identified through monitoring as soon as possible and in no case later than one year after the lead agency's identification of the noncompliance; and</p> <p>(v) Conducting the activities in paragraphs (a)(2)(i) through (a)(2)(iv) of this section, consistent with §§ 303.700 through 303.707, and any other activities required by the State under those sections.</p> <p>(b) The identification and coordination of all available resources for early intervention services within the State, including those from Federal, State, local, and private sources, consistent with subpart F of this part.</p> <p>(c) The assignment of financial responsibility in accordance with subpart F of this part.</p> <p>(d) The development of procedures in accordance with subpart F of this part to ensure that early intervention services are provided to infants and toddlers with disabilities and their families under part C of the Act in a timely manner, pending the resolution of any disputes among public agencies or EIS providers.</p> <p>(e) The resolution of intra- and interagency disputes in accordance with subpart F of this part.</p> <p>(f) The entry into formal interagency agreements or other written methods of establishing financial responsibility, consistent with § 303.511, that define the financial responsibility of each agency for paying for early intervention services (consistent with State law) and procedures for resolving disputes and that include all additional components necessary to ensure meaningful cooperation and coordination as set forth in subpart F of this part.</p> <p>34 C.F.R. § 303.120</p>	

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<p>2. The smooth and effective transition from the Arizona Early Intervention Program (AzEIP) to a public school preschool program in accordance with <u>the agreement</u> between the Department of Economic Security and the Department; and</p>	<p>(a) Application requirements. Each State must include the following in its application:</p> <p>(1) A description of the policies and procedures it will use to ensure a smooth transition for infants and toddlers with disabilities under the age of three and their families from receiving early intervention services under this part to--</p> <p>(i) Preschool or other appropriate services (for toddlers with disabilities); or</p> <p>(ii) Exiting the program for infants and toddlers with disabilities.</p> <p>(2) A description of how the State will meet each of the requirements in paragraphs (b) through (f) of this section.</p> <p>(3)(i)(A) If the lead agency is not the SEA, an interagency agreement between the lead agency and the SEA; or</p> <p>(B) If the lead agency is the SEA, <u>an intra-agency agreement</u> between the program within that agency that administers part C of the Act and the program within the agency that administers section 619 of the Act.</p> <p>(ii) To ensure a seamless transition between services under this part and under part B of the Act, an interagency agreement under paragraph (a)(3)(i)(A) of this section or an intra-agency agreement under paragraph (a)(3)(i)(B) of this section must address how the lead agency and the SEA will meet the requirements of paragraphs (b) through (f) of this section (including any policies adopted by the lead agency under § 303.401(d) and (e)), § 303.344(h), and 34 CFR 300.101(b), 300.124, 300.321(f), and 300.323(b).</p> <p>(4) Any policy the lead agency has adopted under § 303.401(d) and (e).</p> <p>(b) Notification to the SEA and appropriate LEA.</p> <p>(1) The State lead agency must ensure that--</p> <p>(i) Subject to paragraph (b)(2) of this section, not fewer than 90 days before the third birthday of the toddler with a disability if that toddler may be eligible for preschool services under part B of the Act, the lead agency notifies the SEA and the LEA for the area in which the toddler resides that the toddler on his or her third birthday will reach the age of eligibility for services under part B of the Act, as determined in accordance with State law;</p> <p>(ii) Subject to paragraph (b)(2) of this section, if the lead agency determines that the toddler is eligible for early intervention services under part C of the Act more than 45 but less than 90 days before that toddler's third birthday and if that toddler may be eligible for preschool services under part B of the Act, the lead agency, as soon as possible after determining the child's eligibility, notifies the SEA and the LEA for the area in which the toddler with a disability resides that the toddler on his or her third birthday will reach the age of eligibility for services under part B of the Act, as determined in accordance with State law; or</p> <p>(iii) Subject to paragraph (b)(2) of this section, if a toddler is referred to the lead agency fewer than 45 days before that toddler's third birthday and that toddler may be eligible for preschool services under part B of the Act, the lead</p>	<p>Federal regulations require a transition plan from an early intervention program to a pre-school program. The Federal rule also requires interagency agreements as necessary to accomplish this transition. The Arizona rule references a particular agreement to that effect between two agencies of Arizona state government. Since such an agreement is subject to change, it would be more appropriate to include the terms of the agreement in the regulation or not refer to it at all.</p>

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	<p>agency, with parental consent required under § 303.414, refers the toddler to the SEA and the LEA for the area in which the toddler resides; but, the lead agency is not required to conduct an evaluation, assessment, or an initial IFSP meeting under these circumstances.</p> <p>(2) The State must ensure that the notification required under paragraphs (b)(1)(i) and (b)(1)(ii) of this section is consistent with any policy that the State has adopted, under § 303.401(e), permitting a parent to object to disclosure of personally identifiable information.</p> <p>(c) Conference to discuss services. The State lead agency must ensure that--</p> <p>(1) If a toddler with a disability may be eligible for preschool services under part B of the Act, the lead agency, with the approval of the family of the toddler, convenes a conference, among the lead agency, the family, and the LEA not fewer than 90 days--and, at the discretion of all parties, not more than 9 months--before the toddler's third birthday to discuss any services the toddler may receive under part B of the Act; and.</p> <p>(2) If the lead agency determines that a toddler with a disability is not potentially eligible for preschool services under part B of the Act, the lead agency, with the approval of the family of that toddler, makes reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for the toddler to discuss appropriate services that the toddler may receive.</p> <p>(d) Transition plan. The State lead agency must ensure that for all toddlers with disabilities--</p> <p>(1)(i) It reviews the program options for the toddler with a disability for the period from the toddler's third birthday through the remainder of the school year; and</p> <p>(ii) Each family of a toddler with a disability who is served under this part is included in the development of the transition plan required under this section and § 303.344(h);</p> <p>(2) It establishes a transition plan in the IFSP not fewer than 90 days--and, at the discretion of all parties, not more than 9 months--before the toddler's third birthday; and</p> <p>(3) The transition plan in the IFSP includes, consistent with § 303.344(h), as appropriate--</p> <p>(i) Steps for the toddler with a disability and his or her family to exit from the part C program; and</p> <p>(ii) Any transition services that the IFSP Team identifies as needed by that toddler and his or her family.</p> <p>(e) Transition conference and meeting to develop transition plan. Any conference conducted under paragraph (c) of this section or meeting to develop the transition plan under paragraph (d) of this section (which conference and meeting may be combined into one meeting) must meet the</p>	

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	<p>requirements in §§ 303.342(d) and (e) and 303.343(a).  (f) Applicability of transition requirements.  (1) The transition requirements in paragraphs (b)(1)(i) and (b)(1)(ii), (c)(1), and (d) of this section apply to all toddlers with disabilities receiving services under this part before those toddlers turn age three, including any toddler with a disability under the age of three who is served by a State that offers services under § 303.211.  (2) In a State that offers services under § 303.211, for toddlers with disabilities identified in § 303.209(b)(1)(i), the parent must be provided at the transition conference conducted under paragraph (c)(1) of this section:  (i) An explanation, consistent with § 303.211(b)(1)(ii), of the toddler's options to continue to receive early intervention services under this part or preschool services under section 619 of the Act.  (ii) The initial annual notice referenced in § 303.211(b)(1).  (3) For children with disabilities age three and older who receive services pursuant to § 303.211, the State must ensure that it satisfies the separate transition requirements in § 303.211(b)(6)(ii).</p> <p>34 C.F.R. § 303.209</p>	
<p>3. The provision of a minimum of 360 minutes of instruction in a program that operates at least three days a week.</p>	<p>(d) Early intervention services.  (1) The IFSP must include a statement of the specific early intervention services, based on peer-reviewed research (to the extent practicable), that are necessary to meet the unique needs of the child and the family to achieve the results or outcomes identified in paragraph (c) of this section, including--  (i) <b><u>The length, duration, frequency, intensity, and method of delivering the early intervention services;</u></b>  (ii)(A) A statement that each early intervention service is provided in the natural environment for that child or service to the maximum extent appropriate, consistent with §§ 303.13(a)(8), 303.26 and 303.126, or, subject to paragraph (d)(1)(ii)(B) of this section, a justification as to why an early intervention service will not be provided in the natural environment.  (B) The determination of the appropriate setting for providing early intervention services to an infant or toddler with a disability, including any justification for not providing a particular early intervention service in the natural environment for that infant or toddler with a disability and service, must be--  (1) Made by the IFSP Team (which includes the parent and other team members);  (2) Consistent with the provisions in §§ 303.13(a)(8), 303.26, and 303.126; and  (3) Based on the child's outcomes that are identified by the IFSP Team in</p>	<p>The State regulation states a minimum number of minutes and days of operation. The Federal rule is more open-ended and requires frequency and duration of services as necessary to meet the unique needs. The Arizona rule potentially requires more than Federal law if the IFSP team decides a child does not need 360 minutes or 3 days a week.</p> <p>The rule allows for more than 360 minutes and 3 days a week, but does not give any criteria for when that might be appropriate.</p>

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	<p>paragraph (c) of this section;</p> <p>(iii) The location of the early intervention services; and</p> <p>(iv) The payment arrangements, if any.</p> <p>34 C.F.R. § 303.344</p>	
<p><del>L. Children in Private Schools. Each public education agency shall establish, implement, and disseminate to its personnel, and make available to parents, written procedures regarding the access to special education services to students enrolled in private schools as identified by the IDEA and regulations, and state statutes and State Board of Education rules.</del></p>	<p>The State must have in effect policies and procedures that ensure that LEAs, and, if applicable, the SEA, meet the private school requirements in §§ 300.130 through 300.148.</p> <p>34 C.F.R. § 300.129</p> <p>(a) General. Each LEA must locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private, including religious, elementary schools and secondary schools located in the school district served by the LEA, in accordance with paragraphs (b) through (e) of this section, and §§ 300.111 and 300.201.</p> <p>(b) Child find design. The child find process must be designed to ensure--</p> <p>(1) The equitable participation of parentally-placed private school children; and</p> <p>(2) An accurate count of those children.</p> <p>(c) Activities. In carrying out the requirements of this section, the LEA, or, if applicable, the SEA, must undertake activities similar to the activities undertaken for the agency's public school children.</p> <p>(d) Cost. The cost of carrying out the child find requirements in this section, including individual evaluations, may not be considered in determining if an LEA has met its obligation under § 300.133.</p> <p>(e) Completion period. The child find process must be completed in a time period comparable to that for students attending public schools in the LEA consistent with § 300.301.</p> <p>(f) Out-of-State children. Each LEA in which private, including religious, elementary schools and secondary schools are located must, in carrying out the child find requirements in this section, include parentally-placed private school children who reside in a State other than the State in which the private schools that they attend are located.</p> <p>34 C.F.R. § 300.131</p>	<p>This regulation simply restates the general requirement regarding procedures to identify and serve children placed by their parents in private schools.</p>
<p>M. State Education Agency Responsible for General Supervision and Obligations Related to and Methods of Ensuring Services.</p> <p>1. The Department is responsible for the</p>	<p>State educational agency or SEA means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary schools and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.</p>	<p>Read together with B.9, this regulation identifies the Arizona Department of Education as the SEA for purposes of supervising and assuring compliance with the Special Education laws.</p>

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<p>general supervision of services to children with disabilities aged 3 through 21 served through a public education agency.</p>	<p>34 C.F.R. § 300.41</p> <p>(a) General. A free appropriate public education must be available to all children residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school, as provided for in § 300.530(d).</p> <p>(b) FAPE for children beginning at age 3.</p> <p>(1) Each State must ensure that--</p> <p>(i) The obligation to make FAPE available to each eligible child residing in the State begins no later than the child's third birthday; and</p> <p>(ii) An IEP or an IFSP is in effect for the child by that date, in accordance with § 300.323(b).</p> <p>(2) If a child's third birthday occurs during the summer, the child's IEP Team shall determine the date when services under the IEP or IFSP will begin.</p> <p>(c) Children advancing from grade to grade.</p> <p>(1) Each State must ensure that FAPE is available to any individual child with a disability who needs special education and related services, even though the child has not failed or been retained in a course or grade, and is advancing from grade to grade.</p> <p>(2) The determination that a child described in paragraph (a) of this section is eligible under this part, must be made on an individual basis by the group responsible within the child's LEA for making eligibility determinations.</p> <p>34 C.F.R. § 300.101</p>	<p>The ages of children that must be served is contained in the general definition of FAPE, which the SEA must guarantee.</p>
<p>2. The Department shall ensure through fund allocation, monitoring, dispute resolution, and technical assistance that all eligible students receive a free appropriate public education in conformance with the IDEA regulations, A.R.S. Title 15, Chapter 7, Article 4, and these rules.</p>	<p>A State is eligible for assistance under Part B of the Act for a fiscal year if the State submits a plan that provides assurances to the Secretary that the State has in effect policies and procedures to ensure that the State meets the conditions in <u>§§ 300.101 through 300.176.</u></p> <p>34 C.F.R. § 300.100</p> <p>(a) The SEA is responsible for ensuring--</p> <p>(1) That the requirements of this part are carried out; and</p> <p>(2) That each educational program for children with disabilities administered within the State, including each program administered by any other State or local agency (but not including elementary schools and secondary schools for Indian children operated or funded by the Secretary of the Interior)--</p> <p>(i) Is under the general supervision of the persons responsible for educational programs for children with disabilities in the SEA; and</p> <p>(ii) Meets the educational standards of the SEA (including the requirements of this part).</p> <p>(3) In carrying out this part with respect to homeless children, the</p>	<p>This regulation lists the broad general responsibilities of the SEA in ensuring the compliance of all the agencies statewide that collectively provide FAPE to Arizona students with disabilities. There are numerous separate provisions of Federal law that make up that overall responsibility. This regulation does not provide any additional guidance on the components of the SEA's duties.</p>

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	<p>requirements of subtitle B of title VII of the McKinney--Vento Homeless Assistance Act (42 U.S.C. 11431 et seq.) are met.</p> <p>(b) The State must have in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in §§ 300.600 through 300.602 and §§ 300.606 through 300.608.</p> <p>(c) Part B of the Act does not limit the responsibility of agencies other than educational agencies for providing or paying some or all of the costs of FAPE to children with disabilities in the State.</p> <p>(d) Notwithstanding paragraph (a) of this section, the Governor (or another individual pursuant to State law) may assign to any public agency in the State the responsibility of ensuring that the requirements of Part B of the Act are met with respect to students with disabilities who are convicted as adults under State law and incarcerated in adult prisons.</p> <p>34 C.F.R. § 300.149</p>	
<p><del>3. In exercising its general supervision responsibilities, the Department shall ensure that when it identifies noncompliance with the requirements of the IDEA Part B, the noncompliance is corrected as soon as possible, and in no case later than one year after the Department's written notification to the LEA of its identification of the noncompliance.</del></p>	<p>b) The State must have in effect policies and procedures to ensure that it complies with the monitoring and enforcement requirements in §§ 300.600 through 300.602 and §§ 300.606 through 300.608.</p> <p>34 C.F.R. § 300.149</p> <p>(a) The State must--</p> <p>(1) Monitor the implementation of this part;</p> <p>(2) Make determinations annually about the performance of each LEA using the categories in § 300.603(b)(1);</p> <p>(3) Enforce this part, consistent with § 300.604, using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in § 300.604(a)(1) (technical assistance), (a)(3) (conditions on funding of an LEA), (b)(2)(i) (a corrective action plan or improvement plan), (b)(2)(v) (withholding funds, in whole or in part, by the SEA), and (c)(2) (withholding funds, in whole or in part, by the SEA); and</p> <p>(4) Report annually on the performance of the State and of each LEA under this part, as provided in § 300.602(b)(1)(i)(A) and (b)(2).</p> <p>(b) The primary focus of the State's monitoring activities must be on--</p> <p>(1) Improving educational results and functional outcomes for all children with disabilities; and</p> <p>(2) Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.</p> <p>(c) As a part of its responsibilities under paragraph (a) of this section, the State must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in</p>	<p>This state rule repeats the requirements of Federal law.</p>

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	<p>paragraph (d) of this section, and the indicators established by the Secretary for the State performance plans.</p> <p>(d) The <b><u>State must monitor the LEAs located in the State</u></b>, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:</p> <p>(1) Provision of FAPE in the least restrictive environment.</p> <p>(2) State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in § 300.43 and in 20 U.S.C. 1437(a)(9).</p> <p>(3) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.</p> <p>(e) In exercising its monitoring responsibilities under paragraph (d) of this section, the State must ensure that when it identifies noncompliance with the requirements of this part by LEAs, the noncompliance is corrected as soon as possible, and <b><u>in no case later than one year after the State's identification of the noncompliance.</u></b></p> <p>34 C.F.R. § 300.600</p>										
<p>N. <b><u>Procedural</u></b> Requirements Relating to Public Education Agency Eligibility.</p> <p>1. Each public education agency shall establish <b><u>eligibility</u></b> for funding with the Arizona Department in accordance with the IDEA and regulations, and state statutes and with <b><u>schedule and method prescribed by the Department.</u></b></p> <p>2. In the event the Department determines that a public education agency does not meet eligibility for funding requirements, the public education agency has a right to a hearing before such funding is withheld.</p>	<p>The SEA must not make any final determination that an LEA is not eligible for assistance under Part B of the Act without first giving the LEA reasonable notice and an opportunity for a hearing under 34 CFR 76.401(d).</p> <p>34 C.F.R. § 300.155</p> <p>(a) State agency hearing before disapproval. Under the programs listed in the chart below, the State agency that administers the program shall provide an applicant with notice and an opportunity for a hearing before it may disapprove the application.</p> <table> <tr> <th>Program</th><th>Authorizing statute</th><th>Implementing regulations Title 34 CFR Part</th></tr> <tr> <td>Chapter 1, Program in Local Educational Agencies</td><td>Title I, Chapter 1, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2701-2731, 2821-2838, 2851-2854, and 2891-2901)</td><td>200</td></tr> <tr> <td>Chapter 1, Program for Neglected and Delinquent Children</td><td>Title I, Chapter 1, Elementary and Secondary Education Act of 1965, as</td><td>203</td></tr> </table>	Program	Authorizing statute	Implementing regulations Title 34 CFR Part	Chapter 1, Program in Local Educational Agencies	Title I, Chapter 1, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2701-2731, 2821-2838, 2851-2854, and 2891-2901)	200	Chapter 1, Program for Neglected and Delinquent Children	Title I, Chapter 1, Elementary and Secondary Education Act of 1965, as	203	
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	<p>amended (20 U.S.C. 2801-2804)</p> <hr/> <p>State Grants for Title II, Part A, Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2981-2993)<sup>208</sup></p> <hr/> <p>Strengthening Instruction in Mathematics and Science</p> <hr/> <p>Federal, State, and Local Partnership for Educational Improvement</p> <hr/> <p>Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2911-2952 and 2971-2976)<sup>298</sup></p> <hr/> <p>Assistance to States for Education of Handicapped Children</p> <hr/> <p>Part B, Individuals with Disabilities Education Act, (except Section 619) (20 U.S.C. 1411-1420)<sup>300</sup></p> <hr/> <p>Preschool Grants</p> <hr/> <p>Section 619, Individuals with Disabilities Education Act (20 U.S.C. 1419)<sup>301</sup></p> <hr/> <p>Chapter 1, State-Operated or Supported Programs for Handicapped Children</p> <hr/> <p>Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 2791-2795)<sup>302</sup></p> <hr/> <p>Transition Program for Refugee Children</p> <hr/> <p>Section 412(d), Immigration and Naturalization Act (8538 U.S.C. 1522(d))</p> <hr/> <p>Emergency Immigrant Education Program</p> <hr/> <p>Emergency Immigrant Education Act (20 U.S.C. 3121-3130)<sup>581</sup></p> <hr/> <p>Financial Assistance for Construction, Reconstruction, or Renovation of Higher Education Facilities</p> <hr/> <p>Section 711, Higher Education Act of 1965 (20617 U.S.C. 1132b)<sup>17</sup></p> <hr/> <p>(b) Other programs--hearings not required. Under other programs covered by this part, a State agency--other than a State educational agency--is not required to provide an opportunity for a hearing regarding the agency's disapproval of an application.</p> <p>(c) If an applicant for a subgrant alleges that any of the following actions of a State educational agency violates a State or Federal statute or regulation, the State educational agency and the applicant shall use the procedures in paragraph (d) of this section:</p>	

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	<p>(1) Disapproval of or failure to approve the application or project in whole or in part.</p> <p>(2) Failure to provide funds in amounts in accordance with the requirements of statutes and regulations.</p> <p>(d) State educational agency hearing procedures.</p> <p>(1) If the applicant applied under a program listed in paragraph (a) of this section, the State educational agency shall provide an opportunity for a hearing before the agency disapproves the application.</p> <p>(2) If the applicant applied under a program not listed in paragraph (a) of this section, the State educational agency shall provide an opportunity for a hearing either before or after the agency disapproves the application.</p> <p>(3) The applicant shall request the hearing within 30 days of the action of the State educational agency.</p> <p>(4)(i) Within 30 days after it receives a request, the State educational agency shall hold a hearing on the record and shall review its action.</p> <p>(ii) No later than 10 days after the hearing the agency shall issue its written ruling, including findings of fact and reasons for the ruling.</p> <p>(iii) If the agency determines that its action was contrary to State or Federal statutes or regulations that govern the applicable program, the agency shall rescind its action.</p> <p>(5) If the State educational agency does not rescind its final action after a review under this paragraph, the applicant may appeal to the Secretary. The applicant shall file a notice of the appeal with the Secretary within 20 days after the applicant has been notified by the State educational agency of the results of the agency's review. If supported by substantial evidence, findings of fact of the State educational agency are final.</p> <p>(6)(i) The Secretary may also issue interim orders to State educational agencies as he or she may decide are necessary and appropriate pending appeal or review.</p> <p>(ii) If the Secretary determines that the action of the State educational agency was contrary to Federal statutes or regulations that govern the applicable program, the Secretary issues an order that requires the State educational agency to take appropriate action.</p> <p>(7) Each State educational agency shall make available at reasonable times and places to each applicant all records of the agency pertaining to any review or appeal the applicant is conducting under this section, including records of other applicants.</p> <p>(8) If a State educational agency does not comply with any provision of this section, or with any order of the Secretary under this section, the Secretary terminates all assistance to the State educational agency under the applicable program or issues such other orders as the Secretary deems appropriate to achieve compliance.</p>	

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	<p>(e) Other State agency hearing procedures. State agencies that are required to provide a hearing under paragraph (a) of this section--other than State educational agencies--are not required to use the procedures in paragraph (d) of this section.</p> <p>Note: This section is based on a provision in the General Education Provisions Act (GEPA). Section 427 of the Department of Education Organization Act (DEOA), 20 U.S.C. 3487, provides that except to the extent inconsistent with the DEOA, the GEPA "shall apply to functions transferred by this Act to the extent applicable on the day preceding the effective date of this Act." Although standardized nomenclature is used in this section to reflect the creation of the Department of Education, there is no intent to extend the coverage of the GEPA beyond that authorized under Section 427 or other applicable law.</p> <p>34 C.F.R. § 76.401</p>	
<p>3. The Department may <b><u>temporarily interrupt payments</u></b> during any time period when a public education agency <b><u>has not corrected deficiencies</u></b> in eligibility for federal funds as a result of fiscal requirements of monitoring, auditing, complaint and due process findings.</p>	<p>(a) General. If the SEA, after reasonable notice and an opportunity for a hearing, finds that an LEA or State agency that has been determined to be eligible under this subpart is <b><u>failing to comply with any requirement described in §§ 300.201 through 300.213</u></b>, the SEA must reduce or must not provide any further payments to the LEA or State agency until the SEA is satisfied that the LEA or State agency is complying with that requirement.</p> <p>(b) Notice requirement. Any State agency or LEA in receipt of a notice described in paragraph (a) of this section must, by means of public notice, take the measures necessary to bring the pendency of an action pursuant to this section to the attention of the public within the jurisdiction of the agency.</p> <p>(c) Consideration. In carrying out its responsibilities under this section, each SEA must consider any decision resulting from a hearing held under §§ 300.511 through 300.533 that is adverse to the LEA or State agency involved in the decision.</p> <p>34 C.F.R. § 300.222</p> <p>(a) Time limit; minimum procedures. Each SEA must include in its complaint procedures a time limit of 60 days after a complaint is filed under § 300.153 to--</p> <p>(1) Carry out an independent on-site investigation, if the SEA determines that an investigation is necessary;</p> <p>(2) Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;</p> <p>(3) Provide the public agency with the opportunity to respond to the complaint, including, at a minimum--</p>	<p>The Arizona regulation is somewhat ambiguous as to the legal process and conclusions that must be reached in order to determine that a PEA has not corrected deficiencies. The Federal rule is more explicit in stating that a PEA must first receive adequate notice and opportunity to take corrective measures before funds are withheld.</p> <p>The state rule identifies multiple processes and SEA oversight powers that could result in a noncompliance finding and/or corrective action demand. Under Federal law, corrective actions are separately addresses for fiscal violations, complaint and due process resolution, and general monitoring for compliance.</p>

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	<p>(i) At the discretion of the public agency, a proposal to resolve the complaint; and</p> <p>(ii) An opportunity for a parent who has filed a complaint and the public agency to voluntarily engage in mediation consistent with § 300.506;</p> <p>(4) Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part B of the Act or of this part; and</p> <p>(5) Issue a written decision to the complainant that addresses each allegation in the complaint and contains--</p> <p>(i) Findings of fact and conclusions; and</p> <p>(ii) The reasons for the SEA's final decision.</p> <p>(b) Time extension; final decision; implementation. The SEA's procedures described in paragraph (a) of this section also must--</p> <p>(1) Permit an extension of the time limit under paragraph (a) of this section only if--</p> <p>(i) Exceptional circumstances exist with respect to a particular complaint; or</p> <p>(ii) The parent (or individual or organization, if mediation or other alternative means of dispute resolution is available to the individual or organization under State procedures) and the public agency involved agree to extend the time to engage in mediation pursuant to paragraph (a)(3)(ii) of this section, or to engage in other alternative means of dispute resolution, if available in the State; and</p> <p>(2) Include procedures for effective implementation of the SEA's final decision, if needed, including--</p> <p>(i) Technical assistance activities;</p> <p>(ii) Negotiations; and</p> <p><b><u>(iii) Corrective actions to achieve compliance.</u></b></p> <p>(c) Complaints filed under this section and due process hearings under § 300.507 and §§ 300.530 through 300.532.</p> <p>(1) If a written complaint is received that is also the subject of a due process hearing under § 300.507 or §§ 300.530 through 300.532, or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process action must be resolved using the time limit and procedures described in paragraphs (a) and (b) of this section.</p> <p>(2) If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties--</p> <p>(i) The due process hearing decision is binding on that issue; and</p> <p>(ii) The SEA must inform the complainant to that effect.</p> <p>(3) A complaint alleging a public agency's failure to implement a due process hearing decision must be resolved by the SEA.</p>	

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	<p>Approved by the Office of Management and Budget under control numbers 1820-0030 and 1820-0600)</p> <p>34 C.F.R. § 300.152</p> <p>(a) The State must--</p> <p>(1) Monitor the implementation of this part;</p> <p>(2) Make determinations annually about the performance of each LEA using the categories in § 300.603(b)(1);</p> <p>(3) Enforce this part, consistent with § 300.604, using appropriate enforcement mechanisms, which must include, if applicable, the enforcement mechanisms identified in § 300.604(a)(1) (technical assistance), (a)(3) (conditions on funding of an LEA), (b)(2)(i) (a corrective action plan or improvement plan), (b)(2)(v) (withholding funds, in whole or in part, by the SEA), and (c)(2) (withholding funds, in whole or in part, by the SEA); and</p> <p>(4) Report annually on the performance of the State and of each LEA under this part, as provided in § 300.602(b)(1)(i)(A) and (b)(2).</p> <p>(b) The primary focus of the State's monitoring activities must be on--</p> <p>(1) Improving educational results and functional outcomes for all children with disabilities; and</p> <p>(2) Ensuring that public agencies meet the program requirements under Part B of the Act, with a particular emphasis on those requirements that are most closely related to improving educational results for children with disabilities.</p> <p>(c) As a part of its responsibilities under paragraph (a) of this section, the State must use quantifiable indicators and such qualitative indicators as are needed to adequately measure performance in the priority areas identified in paragraph (d) of this section, and the indicators established by the Secretary for the State performance plans.</p> <p>(d) The <u>State must monitor the LEAs located in the State</u>, using quantifiable indicators in each of the following priority areas, and using such qualitative indicators as are needed to adequately measure performance in those areas:</p> <p>(1) Provision of FAPE in the least restrictive environment.</p> <p>(2) State exercise of general supervision, including child find, effective monitoring, the use of resolution meetings, mediation, and a system of transition services as defined in § 300.43 and in 20 U.S.C. 1437(a)(9).</p> <p>(3) Disproportionate representation of racial and ethnic groups in special education and related services, to the extent the representation is the result of inappropriate identification.</p> <p>(e) In exercising its monitoring responsibilities under paragraph (d) of this section, the State must ensure that when it identifies noncompliance with the requirements of this part by LEAs, the noncompliance is corrected as soon as</p>	

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	<p>possible, and <b><u>in no case later than one year after the State's identification of the noncompliance.</u></b></p> <p>34 C.F.R. § 300.600</p>	
<p>4. Each public education agency shall, on an annual basis, <b><u>determine the number of children</u></b> within each disability category who have been identified, located, evaluated, and/or receiving special education services. This includes children residing within the <b><u>boundaries of responsibility</u></b> of the public education agency who have been placed by their parents in private schools or who are home schooled.</p>	<p>(a) General. Not later than December 3, 2005, each State must have in place a performance plan that evaluates the State's efforts to implement the requirements and purposes of Part B of the Act, and describes how the State will improve such implementation.</p> <p>(1) Each State must submit the State's performance plan to the Secretary for approval in accordance with the approval process described in section 616(c) of the Act.</p> <p>(2) Each State must review its State performance plan at least once every six years, and submit any amendments to the Secretary.</p> <p>(3) As part of the State performance plan, each State must establish measurable and rigorous targets for the indicators established by the Secretary under the priority areas described in § 300.600(d).</p> <p>(b) Data collection.</p> <p>(1) <b><u>Each State must collect valid and reliable information</u></b> as needed to <b><u>report annually</u></b> to the Secretary on the indicators established by the Secretary for the State performance plans.</p> <p>(2) If the Secretary permits States to collect data on specific indicators through State monitoring or sampling, and the State collects the data through State monitoring or sampling, the State must collect data on those indicators for each LEA at least once during the period of the State performance plan.</p> <p>(3) Nothing in Part B of the Act shall be construed to authorize the development of a nationwide database of personally identifiable information on individuals involved in studies or other collections of data under Part B of the Act.</p> <p>34 C.F.R. § 300.601</p> <p>(a) General.</p> <p>(1) The State must have in effect policies and procedures to ensure that--</p> <p>(i) <b><u>All children with disabilities</u></b> residing in the State, including children with disabilities who are homeless children or are wards of the State, and children with disabilities attending private schools, regardless of the severity of their disability, and who are in need of special education and related services, are <b><u>identified, located, and evaluated</u></b>; and</p> <p>(ii) A practical method is developed and implemented to determine which children are currently receiving needed special education and related services.</p> <p>(b) Use of term developmental delay. The following provisions apply with</p>	<p>This regulation places a duty on PEAs to determine numbers of children in various categories, but the duty of collection and reporting is on the SEA.</p>

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	<p>respect to implementing the child find requirements of this section:</p> <p>(1) A State that adopts a definition of developmental delay under § 300.8(b) determines whether the term applies to children aged three through nine, or to a subset of that age range (e.g., ages three through five).</p> <p>(2) A State may not require an LEA to adopt and use the term developmental delay for any children within its jurisdiction.</p> <p>(3) If an LEA uses the term developmental delay for children described in § 300.8(b), the LEA must conform to both the State's definition of that term and to the age range that has been adopted by the State.</p> <p>(4) If a State does not adopt the term developmental delay, an LEA may not independently use that term as a basis for establishing a child's eligibility under this part.</p> <p>(c) Other children in child find. Child find also must include--</p> <p>(1) Children who are suspected of being a child with a disability under § 300.8 and in need of special education, even though they are advancing from grade to grade; and</p> <p>(2) Highly mobile children, including migrant children.</p> <p>(d) Construction. Nothing in the Act requires that children be classified by their disability so long as each child who has a disability that is listed in § 300.8 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under Part B of the Act.</p> <p>34 C.F.R. § 300.111</p> <p>(d) Reporting. Each LEA that develops and maintains coordinated, early intervening services under this section must <b>annually</b> report to the SEA on--</p> <p>(1) The number of children served under this section who received early intervening services; and</p> <p>(2) The number of children served under this section who received early intervening services and subsequently receive special education and related services under Part B of the Act during the preceding two year period.</p> <p>34 C.F.R. § 300.226</p>	
<p>O. Public Participation.</p> <p>1. Each public education agency shall establish, implement, and disseminate to its personnel, and make available to parents, written procedures to ensure that, prior to the adoption of any policies and procedures needed to comply with federal and state statutes and regulations, there are:</p>	<p>(a) Prior to the adoption of any policies and procedures needed to comply with Part B of the Act (including any amendments to those policies and procedures), the State must ensure that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.</p> <p>(b) Before submitting a State plan under this part, a State must comply with the public participation requirements in paragraph (a) of this section and those</p>	<p>This regulation appears to apply to all Arizona PEAs, including the SEA, when adopting policies and procedures related to IDEA compliance and programs.</p> <p>It is not clear what is covered by "day-to-day operating procedures" of either an SEA or an LEA. That terminology should be explained</p>

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<p>a. Public hearings; b. Notice of the hearings; and c. An opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities. 2. <b><u>This requirement does not pertain to day-to-day operating procedures.</u></b></p>	<p>in 20 U.S.C. 1232d(b)(7).  34 C.F.R. § 300.165</p>	<p>or eliminated.</p>
<p>P. Suspension and Expulsion. 1. Each public education agency shall establish, implement, and disseminate to its personnel, and make available to parents, written procedures for the <b><u>suspension and expulsion of students with disabilities.</u></b></p>	<p>(a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct. (b) General. (1) School personnel under this section may <b><u>remove a child with a disability who violates a code of student conduct from his or her current placement</u></b> to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under § 300.536). (2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section. (c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section. (d) Services. (1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must-- (i) Continue to receive educational services, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and</p>	<p>Arizona law refers to suspension and expulsion, where Federal law talks about "removal from current placement." Both rules deal with discipline of a disabled student for misconduct that applies to all students. The Federal rule is clearly much more extensive.</p>



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	<p>(ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.</p> <p>(2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.</p> <p>(3) A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.</p> <p>(4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under § 300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP.</p> <p>(5) If the removal is a change of placement under § 300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.</p> <p>(e) Manifestation determination.</p> <p>(1) Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--</p> <p>(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or</p> <p>(ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP.</p> <p>(2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.</p> <p>(3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.</p> <p>(f) Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must--</p> <p>(1) Either--</p> <p>(i) Conduct a functional behavioral assessment, unless the LEA had conducted</p>	

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	<p>a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or</p> <p>(ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and</p> <p>(2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.</p> <p>(g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child--</p> <p>(1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;</p> <p>(2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or</p> <p>(3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.</p> <p>(h) Notification. On the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in § 300.504.</p> <p>(i) Definitions. For purposes of this section, the following definitions apply:</p> <p>(1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).</p> <p>(2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.</p> <p>(3) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.</p> <p>(4) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.</p>	

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<p>2. Each public education agency shall require all school-based <b><u>staff involved in the disciplinary process to review</u></b> the policies and procedures related to suspension and expulsion on an annual basis. The public education agency shall maintain documentation of staff review.</p>	<p>(a) General. The SEA must establish and maintain qualifications to ensure that <b><u>personnel necessary to carry out the purposes of this part are appropriately and adequately prepared and trained</u></b>, including that those personnel have the content knowledge and skills to serve children with disabilities.</p> <p>(b) Related services personnel and paraprofessionals. The qualifications under paragraph (a) of this section must include qualifications for related services personnel and paraprofessionals that--</p> <p>(1) Are consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; and</p> <p>(2) Ensure that related services personnel who deliver services in their discipline or profession--</p> <p>(i) Meet the requirements of paragraph (b)(1) of this section; and</p> <p>(ii) Have not had certification or licensure requirements waived on an emergency, temporary, or provisional basis; and</p> <p>(iii) Allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulation, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services under this part to children with disabilities.</p> <p>(c) Qualifications for special education teachers. The qualifications described in paragraph (a) of this section must ensure that each person employed as a public school special education teacher in the State who teaches in an elementary school, middle school, or secondary school is highly qualified as a special education teacher by the deadline established in section 1119(a)(2) of the ESEA.</p> <p>(d) Policy. In implementing this section, a State must adopt a policy that includes a requirement that LEAs in the State take measurable steps to recruit, hire, train, and retain highly qualified personnel to provide special education and related services under this part to children with disabilities.</p> <p>(e) Rule of construction. Notwithstanding any other individual right of action that a parent or student may maintain under this part, nothing in this part shall be construed to create a right of action on behalf of an individual student or a class of students for the failure of a particular SEA or LEA employee to be highly qualified, or to prevent a parent from filing a complaint about staff qualifications with the SEA as provided for under this part.</p>	<p>This regulation is covered by the general Federal rule that requires all staff to be adequately trained and have the knowledge and skills needed to serve children with disabilities. That would include knowledge of the PEA's disciplinary process and the behavior management policies and any unique provisions of a IEP related to behavior controls.</p> <p>As suggested above, either this regulation is unnecessarily repetitive of the general assurance of IDEA compliance, or, it could list the various specific areas in which PEAs are expected to provide training to staff.</p>

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3. Procedures for such suspensions and expulsions shall meet the requirements of the IDEA and regulations, and state statutes.	See No. P.1 above.	Another statement of general compliance with the IDEA is unnecessary.